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The Political Process in Kentucky

By JASPER SHANNON*

Circumstances Peculiar to Kentucky

The roots of law are deeply embedded in politics. Nowhere is this more true than in Kentucky. Law frequently is the thin veneer which reason employs in a ceaseless but unsuccessful effort to control the turbulence of emotion. Born in the troubled era of the American and French Revolutions, Kentucky was in addition exposed to four years of bitter civil violence when nationalism and sectionalism struggled for supremacy (1861-65). Kentucky, accordingly, within her borders has known in its most intense form the heat of passion which so often supplants reason in the clash of interests forming the heart of legal and political processes. Too many times in its colorful history the forms of law have broken down in the conflict of emotions. Due process of law has come hard for Kentuckians as is witnessed by the activities of the Ku Klux Klan after the Civil War and the outburst in certain areas of private justice known as feuds. Moreover, highways became public only after private wars upon toll gates, and the relations of agrarian vendor and industrial corporate vendee produced periods of tobacco "cut outs" and night riding "wars." Assassination climaxed bitter factional and partisan political warfare as the culmination of a century of self-government in the Commonwealth.

In the twentieth century adjustment to the processes of collective bargaining was made slowly in Kentucky, only after sovereignty (legal violence), both national and state, was called upon to restrain the sway of worker and operator passion in the coal fields. Resort to private violence marked the relations of the races for many stormy years after official bloodletting ceased. The enforcement of federal judicial decrees on racial integration in the schools has been marked by unprecedented restraint on the part

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of Kentuckians but the sovereignty of legal violence has recently been invoked.

Nature of Party Process

The party process is a natural one, that is, the outgrowth of peculiarly human traits. Few, if any, political philosophers have consciously provided for the existence of the uneasy coalition of interests called party, but have rather wishfully and wistfully hoped for the attainment of a logical harmony of interests. Party feeling grows out of the diversity of human nature. Men differ on many things but religion and property are basic causes of division. Logically, right presumes the existence of its opposite, evil. Theology conceives of an all good and an all evil. Drawing the line of distinction has been grist in the mills of theologians, lawyers, and politicians since thought has been devoted to human institutions.

Constitutional Basis in Kentucky

Basic to all of Kentucky's constitutions has been the conception of a bill of rights, of the "natural right" of men to disagree, posited upon the differences in human nature.¹ The recognition of individual differences in the constitutions of Kentucky lays the foundation for political parties, for party is but the organization of diverse opinions (frequently poorly disguised rationalizations of personal and group interests) into patterns of similarity of belief not infrequently founded upon real or assumed mutuality of interest. The fundamental political philosophy of Kentucky's constitutions stemmed from John Locke, whose ideas were outgrowths of the English civil wars which culminated in the Bloodless Revolution of 1689 and the establishment of the English Bill of Rights.² These in turn were the children of the differences in religion which characterized English society in the early modern period.

¹ Compare the repeated texts of Bills of Rights in the various Kentucky constitutions.

² See the careful and painstaking study, Lowry, *The Influence of John Locke Upon the Early Political Thought of Kentucky* (unpublished doctoral dissertation in University of Kentucky Library) 12 (1940): "It is the conclusion of this study that the political thought of Kentucky from the time of its first settlement to the time of the adoption of the third constitution in 1850 was, in its broad outlines, substantially the same as that of John Locke, and that the influence which he exerted upon the state was both direct through his political writings, principally his *Of Civil Government: Two Treatises*, and indirect, through Jefferson, Madison, and other Virginia statesmen."

The relation of economic interest to religious belief was not too remote but cannot be described as exclusive.³

Almost from the founding of Boonesboro, Kentuckians began to differ fundamentally. The essence of their differences was over property.⁴ One group with little or no property believed in the basic equality of all human beings, hence, they insisted upon a Bill of Rights and the electoral franchise for *all*⁵ males irrespective of property ownership. Another group had acquired extensive rights in land and in people (slaves). They distrusted the mass of non-slaveholders and particularly ministers of the gospel who regarded slaveholding as a sin.⁶ Unable to deny the vote and representation "in the state of nature" which was primitive Kentucky, property holders undertook to erect buffers against complete popular government by providing for an indirect election of the executive and a second house which was to be a cushion against a unicameral majority. In addition, the judiciary, it was hoped, could invoke the power of the constitution against a popular majority action.⁷ Within this framework of difference of interest the political process has evolved in the Commonwealth.

A singularly persistent element in Kentucky politics has been the bitterness over office holding. From 1792 to 1957 the spoils of office have been a perennial issue between parties, factions and leaders. By 1850, in its third constitution, the power of appointment was decentralized into popular selection in personal con-

³ Tawney, *Religion and the Rise of Capitalism*, Passim (1926). See also, Weber, *The Protestant Ethic and the Spirit of Capitalism*, (1930).

⁴ Coulter, "Early Frontier Democracy in the First Kentucky Constitution," 39 *Political Science Quarterly*, 665 at 665-6 (1924). "... and a cleft in Kentucky society and thought developed between those who had much and those who had little or nothing."

⁵ Emphasis supplied—race and color were to be added later.

⁶ See Brown, *The Political Beginnings of Kentucky*, in 6 *Filson Club Publications* 52 (1889). "The Baptists, so recently emancipated from legal persecution, also sought the new State in large numbers. Their migrations were, in not a few instances, by congregations, for the new country presented to them a double attraction. As a rule they brought but little wealth, yet the road to that fortune which lay in securing provision for their children seemed open. But the strongest motive with the Baptist adventurers lay in the absolute religious equality they were to enjoy in the West. The prejudices of an established church still affected them in Virginia, though statute declared all religions alike in the eye of the law. They had lived through so much opprobrium that the breath of full freedom seemed an answer to long-suffering and prayer. They came filled with convictions that gave them deserved influence, and shaped in no small measure the sentiments of the new State."

⁷ Coulter, *supra* note 4 at 668.

tests,⁸ ultimately further reduced to personal popularity contests within the dominant party in each of Kentucky's counties. This thirst for public office has frequently masked or obscured the conflicts of interest between parties and factions within parties, hence handicapped parties in their role as policy formers.

How the Party Pattern Became Fixed

In general, Kentucky has been a two party state with periods of predominance of one party government.⁹ In the beginning, Kentucky's frontier position as an agrarian commonwealth brought the state to nearly universal adherence to the Democratic party,¹⁰ especially at the time of the collapse of the Federalist Party. This temporary period of near unity¹¹ was followed by the rise of Kentucky's favorite son, Henry Clay, to the leadership of the Whig party when the state split into two fairly equally divided parties.¹² It is significant that property rights and the relations of debtors and creditors (money) were the basis of the new party orientations. The struggle centered around the judicial process as applied to property rights. Popular emotion and the forms of law were in opposition.¹³

From 1832 until 1852 Whig ascendancy maintained itself. The death of Clay and the fearful prospect of civil war over the issue of property in human beings, combined with the increased con-

⁸ Young, *History and Texts of the Three Constitutions of Kentucky*, 56-57 (1890).

⁹ Shannon and McQuown, *Presidential Politics in Kentucky, 1824-1948*, passim (1950).

¹⁰ It is worthy of note that differences over foreign policy, the unpopularity of the Jay treaty of 1795, and the issue of free navigation of the Mississippi River were central problems which galvanized Kentuckians into becoming followers of Jefferson. A Federalist senator was threatened with and narrowly escaped a ducking in the Kentucky river for his favorable vote to the hated Jay treaty. This use of violence was to be too frequently characteristic of political action in the Commonwealth. For full account see Quisenberry, *The Life and Times of Humphrey Marshall*, 57-63 (1892). Party organization in miniature began shortly after Kentucky's admission in the Union for the Democratic societies or "Jacobin" clubs were the nuclei of the Democratic party organization (1793-4). For a discussion, see Luetscher, *Early Political Machinery in the United States*, 46-50 (1903). Interest and ideology appear to have been intimately interlinked in these early proclamations of party views.

¹¹ Kentucky's electoral vote was unanimous for Jefferson, Madison and Monroe. In 1792, Kentucky cast its four votes for Jefferson for vice president, the only votes he received. Dissatisfaction with Monroe arose in Kentucky in 1816 and the ambition of Clay began to manifest itself in 1820. See Stanwood, *History of Presidential Elections*, 20-21, 26, 40, 43, 50, 56, 62, 65-66 and 67 (4th ed. 1896). The legislature chose electors during this time.

¹² Shannon and McQuown, *supra* note 9 at 1-25.

¹³ Shaler, *Kentucky: A Pioneer Commonwealth*, 177-184 (1885).

trol of the national Democratic party by southern slaveholders, led many slaveholders in Kentucky to affiliate with the Democratic party. Other slaveowners, loyal to the Union, felt they had a direct or implied promise from President Lincoln not to interfere with their property in slaves. In 1860 Kentucky was sadly divided with no consensus or majority evident.¹⁴

When the Thirteenth Amendment abolished slavery, loyal slaveowners thought themselves badly treated and moved finally in large numbers into the Democratic party.¹⁵ The newly formed Republican party had little support outside of the highlands of Eastern Kentucky, the less fertile soils of the Knobs, and a small cluster of counties on the Ohio River. As the new industrialism of the north and east rose to a dominant position in the Republican party nationally, the situation of the war-born Kentucky Republicans became anomalous. Many were Union veterans tied by pensions and post office patronage to the Federal Republicans as well as by their intense nationalism.

The Fifteenth Amendment enlarged the Kentucky electorate by the addition of nearly 50,000 newly emancipated slaves to the total eligible voters in 1870. These new voters combined with Eastern Kentucky whites gave the Republicans 46.2% of the total vote in 1872. Kentucky was again a two party state but nearly a quarter of a century elapsed before Republicans were to win their first plurality for the presidency.¹⁶ Republicans in Kentucky were now in an even more paradoxical position, for economically disadvantaged whites and impoverished negroes were linked with a nationally growing industrial elite whose interests certainly contrasted sharply with those of the bulk of Kentucky Republicans.

Race and The Electoral Process

Race had been injected into the political pattern by the Federal enfranchisement of the newly emancipated slaves. Kentucky

¹⁴ From 51.4% Whig in 1852 to 52.5% Democratic in 1856. The Whig party had disappeared and the new Republican Party was not on the Kentucky ballot. The American or "Know-Nothing" Party received most of the old Whig vote. In 1860, 45.2% voted for John Bell, the Constitutional Union candidate; 36.4% supported native son John Breckinridge, Southern Democrat; 17.5% favored Douglas, Northern Democrat, while a bare .9% gave their votes to Lincoln, the Republican. Shannon and McQuown. *Supra* note 9 at 26-35.

¹⁵ In 1864, Lincoln received 30.2% of the total vote cast but this declined to 25.5% for Grant in 1868. *Ibid.* at 35-44.

¹⁶ *Ibid.* at 45-46.

accepted this action with great reluctance but did not resort to the legal subterfuges of poll taxes, literary tests, or "interpretation" of the constitution devices developed in the former Confederate states to disfranchise negroes. Other means were employed less successfully. One of these was to draw precinct lines in such fashion that negroes had long distances to go in order to vote.¹⁷ Sometimes negroes were congregated in fixed assembly points and given whiskey until they were intoxicated, hence unable to vote on election day.¹⁸ On occasion, violence was used or threatened by both races.¹⁹ *Viva voce* voting lent itself to bribery and coercion but Congress wisely provided for a secret ballot for Congressional contests. The General Assembly enacted legislation to carry out Federal action in Congressional elections but the oral vote continued in presidential elections.²⁰

A careful lawyer-historian has circumspectly described the electoral process which developed:

... the democrats, by common consent and with the tacit approval or connivance of men of other parties who sympathized or sided with them, had long indulged in practices which were not in strict accordance with either the spirit or the letter of the election law or conducive to absolutely free and equal and unconstrained elections.²¹

The new allegiance of the former slaveholders to the Democratic party and the intense memories of civil conflict kept Kentucky a dominantly Democratic state for a third of a century (1864-1896). The Republican party, the party of opposition in the state, was composed of economically limited groups who were likely to be more liberal on policy matters than its national leaders,

¹⁷ Before the 15th amendment was adopted Claysville and Ruckerville were excluded from the city limits of Paris, Feb. 28, 1870. 1 Collins, History of Kentucky 201 (2d ed. 1873).

¹⁸ For accounts of various devices, see McDaniel, The Growth of a Governing Class: Political Behavior in Bourbon County. (Master's thesis in University of Kentucky Library, 1950).

¹⁹ Pressure and violence was not all on one side. In 1871, negroes fired on whites at the election in Frankfort. Some negroes were subsequently lynched. 1 Collins, History of Kentucky, 216. A negro killed in an accident was refused burial by his fellow negroes in Harrison county because he had voted the Democratic ticket. A negro in Bourbon county was called from his home in the night by former slaves and sprinkled with bird shot for the same offense. (Ibid. at 217). In 1872, a negro was lynched by his fellows at Madisonville for voting for Horace Greeley. Ibid. at 235.

²⁰ 1 Collins, History of Kentucky 235.

²¹ 2 Wilson, History of Kentucky 542 (1928).

while the Democratic party, firmly in the embrace of the ex-slave holders, was more conservative than its national leadership. After William Jennings Bryan and his financial heresies captured the national leadership, the conservative leadership of Kentucky Democracy was severed from the mass of the party voters. By the narrowest of margins, brought about by the defection of Gold Democrats led by a Democratic ex-governor,²² the Republicans captured Kentucky's electoral vote in 1896, the year following the election of Kentucky's first Republican governor.²³

Industrialism and the Party System

The triumph of a national industrial order in the United States (1870-1900) manifested itself in Kentucky as well as elsewhere. The growing influence of transportation (railroads especially) and centralization of the credit structure (banking) had affected the economy of the Bluegrass Commonwealth with great force during the 1870's and 1880's. Third parties proliferated on the fringe but did not gain control in Kentucky though the Populists exerted considerable influence upon the new constitution adopted in 1892.

Industrial growth gave new political significance to the state's metropolis, Louisville. In 1840, Jefferson county cast 5.3% of the total vote in the entire state. One hundred years later the same county accounted for 16.6% of the Kentucky vote. Jefferson county changed from a predominantly Democratic county in 1876 (70.9%) to a strongly Republican one (61.6%) in 1896.²⁴ Since 1908, Jefferson county has been an accurate barometer of national opinion.²⁵ In fact, as a national barometer Jefferson county has failed only once since 1888.²⁶ It is noteworthy that Jefferson county never voted for Bryan, but in 1912 Theodore Roosevelt received almost as many votes as Woodrow Wilson, outstripping

²² See Stickles, Simon Bolivar Buckner, 407-413 (1940).

²³ McKinley's plurality was barely 281 votes. Bryan took one electoral vote. Confusion was introduced by the repeal of the party emblem law. This action was taken by a Democratic legislature to confuse Republican negro voters. The result backfired. This election produced the biggest participation in Kentucky's political history, 88%. For results see Shannon and McQuown, *supra* note 9 at 72-73.

²⁴ The dramatic change took place in the 1890's. In 1892, the Democrats took 59.3% of the total vote, the Republicans 61.6% in 1896. Shannon and McQuown, *supra* note 9 at 66-72.

²⁵ Louisville Courier Journal, October 21, 1956.

²⁶ In 1904, when the Democrats presented conservative Alton B. Parker as their nominee.

Taft 7 to 1, while Taft ran ahead of Roosevelt in the state. Louisville was more "liberal" than Taft but less so than Bryan. With Jefferson county the holder of the balance of power, now, having one in each five votes in the Commonwealth,²⁷ the urban electorate plays an increasingly significant role in statewide elections but is handicapped in state politics by present legislative and congressional districting laws. The progressive industrialization of the state during the 1950's with the drift of population to the Ohio River region brings closer the time forecast by some of the framers of the 1850 constitution when the Ohio River would dominate the state political picture.²⁸

The Development of Election Administration

The relation of party to state in Kentucky is illustrated best by following the tortuous evolution of election administration. The labyrinthian course of legislative enactment in the first half century of Kentucky's political growth demonstrates empirically and dramatically the difference between the written constitutional command based upon the ideology of Locke and the Declaration of Independence and the pedestrian practices of counting heads to find the "general will" or "consent of the governed".

The voting provisions of the first constitution were brief and general. Suffrage was open to "all free male citizens", twenty-one years old, who had resided in the state two years and the county one year (actually resident at time of election). "All elections shall be by ballot", declared the constitution, and voters were immune from arrest in going to, during, and returning from elections.²⁹ Equality of representation upon a basis of population rather than geography (counties) as existed in Virginia, likewise mark this frontier document as equalitarian in character, though property owners did maintain some indirect safeguards.³⁰ The Bill of Rights added that "all elections shall be free and equal."³¹

²⁷ In 1956, Jefferson county, composing the Third Congressional District, cast 202,745 of the 1,048,644 votes in the state. This was nearly 50,000 more than the next largest—the Seventh—with 154,720, and more than twice as many as the Fourth with 96,200. Figures from the Louisville Courier Journal, November 23, 1956.

²⁸ Notably Squire Turner of Madison county and Garrett Davis of Bourbon county. See Constitutional Debates, 1850, 448-49. For population trends in 1955 see map in Louisville Courier Journal, July 29, 1956. In the 1940's growth in urban population saved the state from a net loss.

²⁹ Ky. Const. (1792) Art. III.

³¹ Ky. Const. (1792) Art. XII, sec. 5.

³⁰ See *supra* page 397.

Finally, the constitution provided that the administration of elections should be in the hands of county sheriffs (elected), or if they refused, in those of justices of the peace (appointed). These local officials were empowered to require an oath of any voter whose qualifications to vote were in doubt. Elections took place in the different counties at the places appointed for holding court.³² It will be recalled that the governor was indirectly chosen by the same body of electors who selected senators and judges.³³

The first legislative act regulating voting was passed shortly after the admission of Kentucky into the Union.³⁴ Amendments were established within the year and the changes made during the first constitution were consolidated in 1798.³⁵ Displeasure with popularly elected sheriffs and indirectly elected governors and senate were assigned as reasons for a second convention.³⁶

The advanced position taken in 1792 with respect to suffrage was not maintained seven years later when the second constitution excluded "negroes, mulattoes and Indians"³⁷ from the privilege of voting. Likewise denied suffrage and office were those "convicted of bribery, forgery or other high crimes or misdemeanors." The legislature was empowered to support the "privilege of free suffrage" by regulating elections and prohibiting "all undue influence from power, bribery, tumult or other improper practices."³⁸ All voting whether individual or in the legislature had to be "personally and publicly given *viva voce*."³⁹

An act of the General Assembly elaborated the constitution the same year. The sheriff supervised elections while justices of the county court selected two of their number as judges and a proper person to act as clerk. The law stated that voters "shall in the presence of said Judges and sheriff vote personally and publicly, *viva voce*."⁴⁰ Election notices were advertised by the sheriffs at the court house, and elections were held there lasting for three days if any candidate requested it. At the conclusion of voting,

³² Ibid., Schedule, sec. 10.

³³ Ibid., Art. II, secs. 2 and 8.

³⁴ Mentioned but not reproduced in 1 Littell, *The Statute Law of Kentucky*, 62-3 (1809).

³⁵ 2 Littell, *supra* note 34 at 24.

³⁶ 1 Collins, *History of Kentucky* 284.

³⁷ Ky. Const. (1799), Art. II, sec. 8.

³⁸ Ibid., Art. VI, sec. 4.

³⁹ Ibid., Art. VI, sec. 16.

⁴⁰ 2 Laws of Ky. (printed by John Bradford, Lexington 1807) c. 22, p. 49.

votes were counted and the sheriff proclaimed the results in the courtyard. He had to certify the winners within twenty days. Appropriate oaths and penalties were established both for officers and for voters whose right to vote might be questioned. In the case of the election of governor and lieutenant governor, the sheriffs met in the state capital at a stated time and after two days compared the votes and determined the results. Where a sheriff or his deputy failed to come, the vote of his county was not counted. A severe monetary penalty could be recovered from a sheriff who failed to perform his duty by any person injured by the sheriff's neglect. Penalties for giving any "bribe or treat" were set up.⁴¹ Obviously the sheriff continued to be the central figure in the entire process of election administration, hence, when a sheriff failed to return his county in an election the result was endless confusion. It is significant that this result in a congressional election developed shortly after the Democrats and Whigs had become definitely organized political parties.⁴² To close the gaps and prevent repetition of the evils revealed in the *Letcher* Case the General Assembly provided a penalty of imprisonment for a sheriff failing to attend and to compare votes, or for withholding his poll books, or for failure to give a certificate of election to any person entitled to it. Accessories were likewise covered with suitable penalties. Sheriffs subsequently could take votes only at places provided by law at the risk of losing their offices.⁴³ Similar penalties and procedures were set up for presidential electors a year later.⁴⁴ Shortly afterward presidential electors were authorized to fill vacancies in their numbers caused by illness or death.⁴⁵

⁴¹ *Ibid.*

⁴² *Letcher v. Moore*, in Clark and Hall, *Cases of Contested Elections in Congress, 1789-1834* at 715-850 (1834). The sheriffs of five counties met to canvass the returns as prescribed by law. Four counties gave Moore an apparent majority. The returns from five counties gave Letcher an apparent majority. The sheriff of the fifth county picked up the poll book of his county and walked off. The sheriffs of three counties certified that Moore had been elected by the vote of four counties. The election was contested before the House of Representatives. After committee investigation and divided reports, a long and confused debate followed but the seat was finally declared vacant. The evidence presented indicates clearly the difficulties of administering an election without an electoral register and the safeguards of nonpartisanship. Disputes arose over (1) age; (2) residence, including that of college students; (3) the time of opening polls; (4) repeating; (5) identity of voters; (6) the meaning of apprenticeship and "free" citizen; and (7) the voting of deaf and dumb citizens.

⁴³ Ky. Acts 1834, c. 838.

⁴⁴ Ky. Acts 1835, c. 38.

⁴⁵ Ky. Acts 1836, c. 33.

Further local administrative action was authorized for the county court to fill vacancies among election officers, either justices of the peace or sheriffs. A clerk for each precinct was now necessary as well as judges, and likewise a sheriff or one of his deputies. If the county court took no action, the sheriff was empowered to act.⁴⁶ Importing voters from other states, particularly from Tennessee, plagued the garnering of "the consent of the governed."⁴⁷

The place of holding elections was originally at the county seat but increase of population and its dispersion in remoter areas led to the creation by frequent special acts of additional polling places. From 1800 to 1850 hundreds of such alterations were made by legislative act. The struggle for partisan advantage is evident.⁴⁸ At various times modifications were provided such as that no change should be made without notification for a certain period of time at the local court house.⁴⁹ At one time the voters themselves were permitted to make the decision in one area.⁵⁰ Likewise, an early form of absentee voter law permitted an absent voter to vote in another county upon oath that he had voted only once.⁵¹

Elections for the General Assembly and for members of Congress were held at different times from that of electors for president.⁵² The relationship of clerk and sheriff in the electoral process is shown by the provision that the latter must deposit the poll books with the clerk ten days after the election (where they were to be open to any one who wished to see) in annual or general assembly elections, but thirty days in case of elections for gover-

⁴⁶ Ky. Acts 1836, c. 60.

⁴⁷ In 1828, a Clay partisan feared his party would lose if Jackson sent a thousand voters, but assured the Secretary of State that "we shall have two or three thousand illegal ones of our own." Quoted in Weston, *Presidential Election of 1828*, 177 (1938).

⁴⁸ See annual session laws, Ky. Acts 1800-1849, *passim*. See for example, Ky. Acts 1820, c. 22. "That all that part of the county of Nicholas north of Licking river, shall be an election precinct in the county of Nicholas; and that elections be held at George Fielder's mill in said precinct."

⁴⁹ Ky. Acts 1812, c. 6. The voter was given his choice of precincts but only one vote.

⁵⁰ Ky. Acts 1845, c. 334.

⁵¹ Ky. Acts 1824, c. 2. "To give his vote at any place of voting at which he may be at the time of such election."

⁵² Electors were elected first in districts (Ky. Acts 1823, c. 718) and then by general ticket in 1828. (Ky. Acts 1827, c. 144). But see Stanwood, *supra* note 11, where it is stated that electors were chosen by the legislature until 1828. Vacancies were to be filled by the legislature.

nor and members of Congress.⁵³ In 1831, the same provisions were set up for electors.⁵⁴

Evidence that elections had been absorbed into Kentucky culture was indicated by legislation prohibiting betting on elections any time six months before hand. "Procuring" by bribery and penalties upon voters for falsely voting likewise were provided. Circuit judges were commanded to compel poll books to be opened up to grand juries and county attorneys were directed to take appropriate action. Legal recognition of the existence of political parties finally took place in 1842. The justices of the peace were given leeway in selection of election officials to go beyond their own numbers and

... so long as it shall be apparent that there are two distinct political parties in the State, advocating different principles, differing in their views in regard to either State or National policy, it shall be the duty of the County Courts to select one Judge of the election at each place of voting, from each of the aforesaid parties, and shall also appoint a Clerk, differing in politics with the Sheriff, who may preside at any precinct or place of voting, so that the officers conducting each and every election, shall be equally divided in politics.⁵⁵

In this fashion the principle of bipartisan administration of elections at the precinct level was established within fifteen years after the rise of the Whig-Democratic rivalry.

The Constitution of 1850 made few significant alterations in the suffrage. The exclusion of non-Caucasians was affirmatively stated by inserting the qualifying adjective "white" before "male citizen." Fixing boundaries of voting precincts was left to the legislature to set up or to delegate to the counties.⁵⁶ The oral vote was continued except for a provision for a ballot for dumb persons.⁵⁷ The General Assembly was permitted to prescribe conditions and rules for election of officers in cities and towns.⁵⁸ A new provision fixed the hours of holding elections from 6 A.M. to 7 P.M.⁵⁹ Very significantly for the future of election administra-

⁵³ Ky. Acts 1829, c. 352.

⁵⁴ Ky. Acts 1831, c. 620.

⁵⁵ Ky. Acts 1841, c. 377, sec. 14. Approved March 1, 1842.

⁵⁶ Ky. Const. (1850), Art. II, secs. 5 and 8.

⁵⁷ *Ibid.*, Art. VIII, sec. 15.

⁵⁸ *Ibid.*, Art. VI, sec. 6.

⁵⁹ *Ibid.*, Art. VIII, sec. 16.

tion, the third constitution commanded the direct election of sheriffs and county clerks as well as other local officers, judges, and law enforcement officers.⁶⁰ This formed the pattern of a decentralization of local government and the formation of a nucleus of popularly elected officers who have been the ganglia of party organization within Kentucky for more than a century. The selection of personnel instead of the determination of policy was placed in the hands of the electorate. Agreement upon policy on the local level depended largely upon the accident of interpersonal ambition and party adjustment. Subsequently, more detailed legislative prescriptions circumscribed local officials. Voters were asked their "consent" in additional voting while policy fell into the interstices of personality, ambition and individual conflict. The 1850 Constitution likewise added to the number of statewide officers to be chosen directly by the people and thereby created more dispersion of policy into numerous and uncoordinated units.

Pursuant to the new constitution an elaborate code of election administration was enacted by the legislature in 1850. Contemporary political parties received formal legal recognition by name for the first time. In authorizing county courts to appoint election officers, the act commanded that they should "appoint an equal number from each of the political parties (Whig and Democrat,) so long as said parties shall continue in this state."⁶¹ In 1851, precinct boundaries were fixed as the same districts as those for justices of the peace except in Louisville where wards were prescribed.⁶² Subsequently local county courts were authorized to change precinct lines sixty days before an election on petition of voters.⁶³ Still later a majority of the voters of the precinct was required for a change.⁶⁴

The disappearance of the Whig party raised complications for the 1850 act specifying the parties by name, hence, in 1857, the General Assembly altered the rule to read "so long as there are two distinct political parties in the Commonwealth, . . . in all cases of elections by the people . . . one judge at each place of

⁶⁰ *Ibid.*, Art. VI.

⁶¹ 1 Ky. Acts 1850, c. 614.

⁶² Ky. Acts 1851, c. 25.

⁶³ Ky. Acts 1853, c. 509.

⁶⁴ Ky. Acts 1855, c. 61.

voting shall be of one political party and the other of the opposing party." Like differences were to be maintained between the sheriff and clerk provided enough members of each political party resided in the several precincts.⁶⁵ Under the 1857 rule the election of 1860 with four parties would have been a nightmare had not the legislature early in 1860 changed the law to read "each of two great political parties."⁶⁶ At the same time voting procedure was tightened somewhat by providing that votes should be numbered on the poll books beginning with one and continued consecutively.⁶⁷

Federal control over federal elections grew rapidly during the thirty years from 1840 to 1870. In 1847 Kentucky acted to comply with the Federal Act of 1845 requiring a uniform method of choosing electors and fixing one election day for the choice.⁶⁸ Kentucky had already confined election for presidential electors to one day in 1840.⁶⁹

At the end of civil conflict the presence of federal troops cast its shadow over the electoral process. In February 1866, the legislature enacted a provision that

Where it shall appear that the election has not been free and equal, because of military interference in favor of the party obtaining the certificate with the officers of the election, or with the voters . . . the office shall be declared vacant. . . .⁷⁰

This enabled a Democratic legislative majority to invalidate an election in northern Kentucky "supervised" by Federal negro troops.⁷¹ In preparation for the congressional election in 1867, the General Assembly first authorized each county judge to appoint all officers to conduct the election⁷² but two weeks later this

⁶⁵ Ky. Acts 1857, c. 331.

⁶⁶ Ky. Acts 1859, c. 691. Approved Feb. 28, 1860.

⁶⁷ Ky. Acts 1859, c. 150. Approved Feb. 6, 1860.

⁶⁸ Ky. Acts 1847, c. 511. Approved Feb. 29, 1848.

⁶⁹ Ky. Acts, Special Session 1840, c. 1.

⁷⁰ Ky. Acts 1865, c. 896.

⁷¹ A competent historian describes the election as follows: "Most of the disqualified voters were not even allowed to see the judges, but were prohibited from casting a ballot or sent under a negro guard to the military prison on the outskirts of the city, where they were kept until the next day. A few were tied to trees until the election was over. No affidavit was required of those voting the Union ticket, and soldiers were allowed to vote regardless of whether or not they were citizens." Barnes, John G. Carlisle 23 (1931).

⁷² Ky. Acts, adjourned session 1867, c. 1254.

hurriedly passed act was repealed, and a new one enacted providing that all laws in force with respect to other elections would apply to the election of congress.⁷³ The following year the legislature set an election for congress in November and every two years thereafter.⁷⁴

Expansion of the electorate came from the Federal government. The fifteenth amendment was opposed intensely and nearly unanimously by Kentuckians—at least in the legislature.⁷⁵ The matter of negro suffrage was a crucial issue of division between Republicans and Democrats as the two major parties began to crystallize in reconstruction days.⁷⁶ Then once more pursuant to Federal direction the legislature enacted a law providing the written ballot in voting for members of congress but the oral ballot continued in state and local elections. The ballot was to be of white paper and to be examined by judges to see there was only one ballot. The name of each voter was announced publicly by the sheriff as the voter offered his ballot. The count of ballots, however, was made at the precinct “privately” and the ballot boxes kept by the county clerk.⁷⁷

The first timid steps in the direction of registration were taken a decade later. The county court was empowered to appoint two persons, “discreet citizens,” for each precinct “of opposite parties if they exist” to make a list of eligible voters. This was to be done at the election of the governor to provide a list of those eligible to vote for representatives in Congress. Further names, if they were known, were to be added from poll tax lists.⁷⁸

The situation was ripe for a registration law so that a legal list of eligible voters would be available for voting officials. The growth of Louisville in the Civil War decade including the drift of negroes and some immigrants to the city led to special efforts to regulate voting in the urban center.⁷⁹ In 1876, the governor

⁷³ Ky. Acts, adjourned session 1867, c. 1434.

⁷⁴ 1 Ky. Acts 1867, c. 1181. Approved March 9, 1868.

⁷⁵ The vote of rejection on March 12, 1869 was 27-6 in the Senate and 80-5 in the House of Representatives. 9 Am. Ann. Cyc. 1869, 377.

⁷⁶ Coulter, *The Civil War and Readjustment in Kentucky*, c. XIX, pp. 411-439 (1926).

⁷⁷ Ky. Acts 1871, c. 861. Approved March 2, 1872.

⁷⁸ Ky. Acts 1881, c. 1446. Approved April 24, 1882.

⁷⁹ Louisville grew from 68,033 in 1860 to 100,732 in 1870 while rural Jefferson county declined by 3,168. 10 Am. Ann. Cyc. 1870, 423.

vetoed legislation providing for ballot voting in a new town though the Court of Appeals took a more liberal view subsequently.⁸¹

Though the secret ballot had been adopted by every state but Kentucky by 1885, ballots were still unofficial and expensive for candidates who paid for them.⁸² The last to abandon oral voting, Kentucky had the "honor" of being the first state to provide for the Australian secret official ballot though limited to Louisville.⁸³ A blanket ballot without party designations, the names of candidates were listed in alphabetical order. Finally the new constitution of Kentucky in 1891 adopted the secret official ballot statewide at public expense as a part of the fundamental law of the state, but with considerable opposition and continued resistance.⁸⁴

Significantly no mention of the word "party" is made in the 1891 constitution any more than in its three predecessors. After one hundred years of party government, the framers of the constitution saw no need for limiting the party process but left its control to the rules or to the unwritten common law of voluntary human associations like that of churches or professional bodies.

In 1892 an elaborate election code was set up by the General Assembly to carry out its authority under the new constitution.⁸⁵ This Act continued the bi-partisan administration of elections but a critical period lay ahead. Kentucky was on the verge of becoming a doubtful state. The old landed Confederate elite was fad-

⁸⁰ 1 Am. Ann. Cyc. N.S. 1876, 438.

⁸¹ *Rogers v. Jacobs*, 88 Ky. 502, 11 Ky. L. Rep. 45, 11 S.W. 513 (1889). The court held that the clause of the 1850 constitution authorizing the legislature to regulate elections in cities and towns was broad enough to cover providing for the secret ballot without violating the "free and equal" clause of the constitution. However, the absence of any provision for illiterates voting was fatal to part of the law, for the secret ballot "practically operates to deprive those unable to read or write of a free and intelligible choice, and, in fact, makes free suffrage as to them a matter of chance and accident." (P. 509) In view of the prevalence of illiteracy at the time the conclusion was practical but startling in its revelation. In 1870, 201,077 whites and 131,050 colored over ten were illiterate. 43,826 white males (eligible voters) were included. This meant over half the negroes and one fourth of the white voters were unable to comprehend the elementary symbols of human communication. 11 Am. Ann. Cyc. 1871, 438.

⁸² Evans, A History of the Australian Ballot System in the United States 16 (1917).

⁸³ Supra note 82 at 19. Ballots were printed by the mayor at expense of city. Ky. Acts 1889, c. 266, sec. 3.

⁸⁴ Ky. Const. (1891) sec. 147. There was opposition in the convention and an amendment to restore oral voting was subsequently submitted to the voters unsuccessfully in 1905. Ludington, American Ballot Laws, 1888-1910 30 (1911).

⁸⁵ Ky. Acts 1891, c. 65.

ing.⁸⁶ The election of the first Republican governor in 1895 and the slim margin of victory of McKinley over Bryan in 1896 was followed by the bitterest partisan and factional contest over electoral administration in the history of the state. The existing legal procedure provided that the executive branch composed of the Governor, Attorney General, and Secretary of State, (or in the absence of one of these, the Auditor) should examine the election returns and certify the results. Any two could form an authoritative group.⁸⁷ Party feeling was intense as the economic depression deepened and an intraparty crisis over credit shattered the already slowly eroding unity of the dominant party.⁸⁸

The new constitution left the General Assembly to "judge of the qualifications, elections and returns of its members, but a contested election shall be determined in such manner as shall be directed by law."⁸⁹ Upon this constitutional base the celebrated Goebel election law of 1898 was passed, setting up an Election Commission of three members elected by the legislature to control the administration of elections. This commission in turn could appoint subordinate boards in each county of the Commonwealth. This gave the majority party in the General Assembly control of the entire election process. With a legislature which could establish its own election districts, by gerrymander if necessary, this election law seemed designed to perpetuate the one party dominance which was the heritage of the Civil War.⁹⁰ Out of this law grew violence, near civil war, and the assassination of the author of the law when he and his followers proceeded to unseat the Republican governor, who, on the face of the returns had been chosen by the people and duly approved by the Election Commission set up in the Goebel law.⁹¹ This law⁹² and its tragic conse-

⁸⁶ Stickles, *supra* note 22 at 391.

⁸⁷ Ky. Acts 1891, c. 65, art. 5, sec. 6.

⁸⁸ In 1894, a close election to the Court of Appeals was disputed. The governor and auditor voted against the apparent winner, who had a twenty-five vote margin, in favor of another. The declared nominee resigned and the governor appointed a successor. The opposition party made this an issue in the 1895 election. 20 Am. Ann. Cyc. N.S. 1895, 382.

⁸⁹ Ky. Const. sec. 38.

⁹⁰ "What had formerly been done to abate glaring wrongs and to arrest the abuse of arbitrary power, was now repeated with purely selfish and unworthy purpose of gaining and holding political power." 2 Wilson, *History of Kentucky*. 542 (1928). Henry Watterson termed the Goebel Law an "atrocious measure". *Ibid.* at 543.

⁹¹ The circumstances of the election are pointed up by the fact that fifteen persons were killed at the polls and twelve more so critically wounded as to en-

quences demonstrated that under the leadership of a powerful and selfwilled man the authority to settle all contested elections could include power to select executive, legislative and judicial officers. The result of this bold attempt to assert complete control over the electoral process laid the foundation for the setting up of stricter laws on elections and a restoration of bipartisan administration. The events of the Goebel period were to produce striking changes in the nominating process as well.

During the crisis following the election of 1899, a kind of bipartisan understanding was reached to repeal the offensive Goebel law and in the fall of 1900 a special session of the General Assembly reinstated bipartisan administration. The system then adopted substantially continues to exist. Each of the major parties' central committees nominates an approved list of names to the governor from which he selects one from each party, who, together with the clerk of the Court of Appeals, forms the Board of Election Commissioners of three, who appoint county boards selected in similar manner from lists proposed by county party committees with the sheriff as the third member. These county committees then select precinct election officials with an equal number from each party.⁹² The clerk of the Court of Appeals is a quasi-judicial official, hence had a certain non-partisan aspect, though as an elective official he was tied closely to the partisan process. Finally, in 1956, in part as a result of intraparty strife, the secretary of state replaced the clerk of the Court of Appeals.⁹⁴ The effect of this arrangement is that the odd man on the election boards where two form a quorum, controls the election officers. This arrangement is a factor tending toward one party government in the great majority of Kentucky counties. One party control may lend itself to interfactional alliances between the parties, in intraparty bickering and jockeying for power, especially in

danger their lives. 4 Am. Ann. Cyc. 3d series 1899, 409. At the same period the chief supervisor of elections for Kentucky and subsequently lieutenant governor of the state declared that he found "five per cent of all the votes registered were certainly fraudulent and five per cent more were probably fraudulent. In many precincts, in every election, more votes than that, by the mistakes or the frauds of election officers, are not counted as they should be". Edward J. McDermott in discussion entitled National Conference on Practical Reform of Primary Elections 51 (1898).

⁹² Ky. Acts 1898, c. 13.

⁹³ Ky. Acts, Special Session 1900, c. 5.

⁹⁴ Ky. Acts, Special Session 1956, c. 5.

primaries. At one time there were charges of a long-continued bipartisan machine.⁹⁵

Finally, bipartisan administration did not eliminate fraud, violence, or bribery in elections though it undoubtedly reduced the amount of each. Within the last twenty years dramatic cases of all have attracted widespread attention with convictions in federal courts in two notable cases. The precinct count of ballots won widespread disfavor. Political folklore maintained that the Democratic west and Republican east withheld their returns, each trying to count the necessary number to give a *majority in a close contest*.⁹⁶

After the 1927 gubernatorial election gave a divided result, a Republican governor and all other state officials Democratic, a law was passed to guarantee an "honest count." This measure provided that the ballot boxes should be taken to the courthouse from the various precincts and delivered to the county clerk. Then, under the supervision of the sheriff and county election commission the returns were counted publicly.⁹⁷ Apparently this produced a more accurate result but the slow count which in the case of primaries might carry over the weekend led to considerable dissatisfaction. The gradual introduction of voting machines is modifying this objection by eliminating the elements of fraud and enormously increasing the speed of returns.⁹⁸ The shift of primaries from Saturday to Tuesday has removed the necessity of postponement of counting over the Sabbath.

Finally, the potential electorate has been more than doubled by expansion of the "right to vote", first by Federal action in the nineteenth amendment removing sex as a qualification though the 1891 Constitution remains unchanged, and finally by lowering age limits to eighteen by state constitutional amendment in 1955.⁹⁹

⁹⁵Shannon, The Governor's Election of 1927 in Kentucky. (Unpublished mss. in University of Wisconsin Library.)

⁹⁶In 1920, the Democrats carried Kentucky by a few more than 6,000 votes for the presidency but a late count in eastern Kentucky gave 5,000 Republican plurality over the Democrat for the Senate. The victorious candidate took his oath with his hand on a passage in the Bible which reads: "He looked unto the hills for the source of His strength."

⁹⁷The so-called Brock-Gilbert law. Ky. Acts 1930, c. 49.

⁹⁸The returns of urban centers in Kentucky now lead the nation in establishing trends. With Jefferson county the bellwether unit, results are indicated very quickly.

⁹⁹Kentucky is the second state to take this action. There was little enthusiasm, for only a few voted and the majority for the amendment was not large.

In conclusion, it can be said that Kentucky election laws have generally followed rather than anticipated evils. Ballot boxes have been locked too frequently after elections have been stolen and hands put in dikes just in time to save the electoral process from total collapse instead of trying scientifically to foresee and prevent evils by systematic study and careful correction of procedures to safeguard the democratic process. Partisan or factional advantage rather than fair and accurate measurement of the opinions of voters has been too often the real legislative intent. The result of this failure to apply preventive justice has resulted in a corrosion of civic attitude with an atmosphere of fear, distrust, and suspicion linked to the entire democratic procedure. This may account in part for the popular disfavor of "politics" and "politicians" among voters in general. Such cynicism is not a healthy symptom for a people who are to take the lead for democracy throughout the world.

In spite of the failure of any of Kentucky's constitutions, not even the long document of 1891, to mention political parties, these "natural" human institutions have been recognized for more than a century, not only as useful instruments, but as necessary devices, for the most elementary purpose of clarifying "the consent of the governed" and the preservation of the elaborate Bills of Rights set up in all of Kentucky's fundamental laws.

Registration of Voters

Determination of eligibility for voting is relatively simple in a farm or village community but in urban and industrial areas anonymity is characteristic of group living. The growth in population alone without regard to dropping the sex qualification vastly increased the problem of listing, processing, and certifying the electorate. Before 1920 Jefferson county had almost as many potential voters as the entire state had had in 1824. The expanded electorate is reflected in the fact that the Eisenhower vote by itself in Jefferson county in 1956 exceeded the entire vote in the state until after 1852. The total vote cast in Jefferson county in 1956 was greater than in any election in the whole state prior to 1876. With more than a million votes recorded in 1956, a number only slightly smaller than the entire population of the state in

1860, the very magnitude of the task demands different methods of administration.

The tradition of election irregularity which has been strong in Kentucky, accentuated by the emotion of race, added to the complexities and made a preliminary list of eligibles a necessity for accurate determination of the popular will. However, it has taken four score years to develop the registration process to the limited success it has today. The first registration law in the United States¹⁰⁰ dates from the period of Kentucky's second constitution, but no mention of registration was made in any of Kentucky's constitutions before 1891. However, fifteen years earlier a list of voters on a statewide basis was ordered.¹⁰¹ The first registration law for Louisville was approved in 1876 by the legislature but vetoed by the Governor because it violated the "free and equal" clause of the 1850 constitution. He declared:

Liberty-loving people should be careful how they tear away the right of suffrage even from the friendless and defenseless immigrant, for if this be accomplished the time will soon approach when the poor but honest sons of toil will be disfranchised also, and by degrees constitutional rights will be manacled and crushed by the powerful and arrogant.

Not only fear of the oppression of the humble but the novelty of the act offended the chief executive for he declared: "So far as I am informed there is no State in this Union where registration of voters is required in part of the state, and not authorized in other parts of the state."¹⁰² The Court of Appeals more accurately declared a subsequent registration law for Jefferson county¹⁰³ to be constitutional. The opinion stated that the "free and equal" clause did not preclude classifying urban voters differently from rural ones and providing that the former must register in order to vote.

They [rights of voters] certainly are not such as may be secured by the indiscriminate exercise of the right of suffrage, without regard to qualifications or regulations necessary to test and determine the right of those who offer

¹⁰⁰ Harris, *Registration of Voters in the United States* 65 (1929). Massachusetts passed a registration law in 1800.

¹⁰¹ See *supra* page 409.

¹⁰² Governor James B. McCreary in his veto message. 1 Am. Ann. Cyc. N.S. 1876, 438-9.

¹⁰³ 2 Ky. Acts 1883, c. 1033.

to vote. Nor can elections be considered free and equal when in a portion of the State they may be conducted under the general law comparatively free from the influence of force and fraud, while in another portion, for the want of more suitable and effective regulations than are provided by the general laws, the timid and weak are deterred by violence or tumult from attempting to vote; and illegal votes, added to those influenced by bribery, constitute a balance of power, and often a majority of the whole number given.

Elections are free and equal only when all who possess the requisite qualifications are afforded a reasonable opportunity to vote without being molested or intimidated, and when the polls are in each county and in each precinct alike freed from the interference of contamination of fraudulent voters.¹⁰⁴

The nature of the vote was even more clearly shown by the court when registration laws had been extended to other urban centers.

The true theory upon which these laws are based is, that they must not impair or abridge the elector's privilege, but merely regulate its exercise by requiring evidence of the right. The right cannot be impaired, but it may be regulated. Evidence as to it may be required consistent with the right itself. The purpose is to prevent abuse of the privilege and to guard the purity of our elections. Looking at them in this light, their importance, and indeed necessity in densely populated localities, is evident.¹⁰⁵

The court was actually setting aside the natural rights theory of the suffrage and correctly establishing the *office* theory. Members of the electorate like members of juries must have certain qualifications to fulfill the office of a voter.¹⁰⁶ Accordingly, though the 1850 constitution did not mention registration the legislature had ample power to act.

It is the constitutional duty of our Legislature to regulate elections. The Constitution is silent as to how or when it should be ascertained who are entitled to vote. It

¹⁰⁴ Commonwealth v. McClelland, 83 Ky. 686 at 693, 7 Ky. L. Rep. 769 at 773 (1886).

¹⁰⁵ City of Owensboro v. Hickman, 90 Ky. 629 at 632, 12 Ky. L. Rep. 576 at 578 (1890).

¹⁰⁶ "The voter does not exercise a natural right when he casts his ballot, but performs a public governmental office." 14 Encyclopaedia of the Social Sciences 449. For a careful examination of the various theories of the suffrage see Shepard, "The Theory of the Nature of the Suffrage" in 9 Am. Pol. Sci. Assn. Proceedings 106-36 (1913).

is a privilege more than a right. Some persons are not entitled to exercise it, and it is, therefore, the right and duty of the Legislature to provide in such way as to it may seem best, provided it be constitutional, a mode of ascertaining who are legal voters. This is indispensable to free and fair elections, and the ascertainment of it by means of a uniform and reasonable registry law is but an exercise by the Legislature of a proper power. It creates only a condition to the exercise of the privilege. Some inconvenience or hardship will result from any law looking to this end. All human work is imperfect. The elector is invested by the Constitution with the privilege of voting. It is the sign of sovereignty in him.¹⁰⁷

Though the legislature could regulate it must not be so restrictive in its action as substantially to reduce the privilege itself; hence allowing only one day a year registration was struck down by the Court.¹⁰⁸

The constitution of 1891 specifically and comprehensively covered the topic of registration. It commanded the General Assembly to provide for the "registration of all persons entitled to vote in cities and towns having a population of five thousand or more" and added that the legislature "may provide for the registration of other voters in the State." In addition, the constitution states that "where registration is required, only persons registered shall have the right to vote." Perhaps a further sentence was supererogatory, but to eliminate all doubt, it stated: "The mode of registration shall be prescribed by the General Assembly."¹⁰⁹

Notwithstanding these painstaking efforts, registration has had a stormy constitutional and legislative history and the process is not yet perfected. In 1892, the General Assembly carried out the mandate with respect to registration.¹¹⁰ The law by itself was not effective. In the years 1903 and 1905 in Louisville, where the police force was a tool of the Democratic organization wholesale violence and fraud were applied to registration as well as to the election. In 1905, after an election marked by fraud two years previously, registration itself was directly interfered with by both

¹⁰⁷ *City of Owensboro v. Hickman*. 90 Ky. at 635, 12 Ky. L. Rep. at 578 (1890).

¹⁰⁸ *Ibid.* at 636.

¹⁰⁹ Ky. Const., sec. 147.

¹¹⁰ Ky. Acts 1891, c. 65, art. 4. The act applied to first, second, third and fourth class cities.

violence and fraud. A fusion effort of some Democrats and Republicans to block the Democratic machine led to the perpetration of acts of police violence and private fraud which threatened the whole concept of free elections.¹¹¹ A bipartisan Court of Appeals in a unanimous decision found at least 1829 illegal registrations. In eloquent and dramatic language the Court rebuked contemporary political practices:

No people are wholly civilized where a distinction is drawn between stealing an office and stealing a purse. No truly honest man will be satisfied with an office to which his title is not as valid as that to the homestead which shelters his family; and to him who knowingly holds an office obtained by fraud, force, or chicane will ever be applied the language of the dramatist to an usurper of old, "Now does he feel his title hange loose about him, like a giant's robe upon a dwarfish thief."¹¹²

A generation after the new constitution was approved, the first statewide registration law was passed by a Democratic legislature over a Republican governor's veto. But this act fell before the decision of the Court of Appeals which found that the law impinged upon the right to vote since no provision was made for registration between July and August for the ensuing primary nor for voters becoming twenty-one after November and before the following July. This opinion appears meticulously restrictive of legislative authority.¹¹³ The effect of this limiting interpretation was to delay statewide registration for still another decade.¹¹⁴

In the meantime, Louisville registration laws were again subjected to a fantastic piece of fraud, this time by the Republican party which had been in the ascendancy in the metropolis since 1917. Advantage was taken of the residence of a large number of negroes in certain precincts to effect one of the most systematic and cleverly devised voting frauds in the history of the United States by manipulating registration lists.¹¹⁵ A large scale use of

¹¹¹ Booth, "The Louisville Contested Elections Cases," 20 Green Bag 81 (1905).

¹¹² Scholl v. Bell, 125 Ky. 750 at 798, 31 Ky. L. Rep. 335 at 357, 102 S.W. 248 at 262 (1907). The fact that the police were selected on a partisan basis was a very important element in what happened.

¹¹³ Perkins v. Lucas, 197 Ky. 1, 246 S.W. 150 (1922). The dissent of Judge Clay sounds reasonable.

¹¹⁴ Ky. Acts 1936, c. 45, sec. 6-9.

¹¹⁵ Castleman, "Louisville Election Frauds in Court and Out," 16 Nat. Mun. Rev. 761 (1927).

unpurged voting lists was the source of this action. The Republican organization canvassed the election precincts and made a list of registered voters who had died or moved away. Then fraudulent voters were furnished with tokens which they were to turn in at a stipulated place and be paid at a stated rate for each vote. Some managerial genius had invented this assembly line method of discovering the general will. This episode demonstrated dramatically the necessity for an effective purgation method for the proper working of an adequate registration system.¹¹⁶ This classic fraud was the occasion for a movement for a new registration law, and ultimately in 1930, Louisville was given a model system by the legislature.¹¹⁷ When Kentucky finally adopted statewide registration in 1936,¹¹⁸ the failure to maintain annual purgations led to similar accumulations of cluttered registration lists. The conditions of electoral lists were startlingly revealed in 1949 in Bourbon county after electoral frauds in the county had attracted nationwide attention. In a last minute effort where the local board had failed to purge the lists before a primary in 1949, the Circuit Judge undertook to purge the list himself but was reversed by the state's highest court.¹¹⁹ Finally, yielding to the pressure of various citizens' organizations the Governor appointed a committee which recommended several of the suggestions of the citizens' organizations and in 1952 a comparative signature law was adopted.¹²⁰

The fact that registration, administration of elections, and purgation are centralized in one Board of Election Commissioners,

¹¹⁶ The facts are given in detail in *Taylor v. Nuetzel*, 220 Ky. 510, 295 S.W. 873 (1927). The election was invalidated. It is worthy of note that the single Judge who dissented was a Republican who won the governorship in this year. The author of the majority opinion three years later was elected as a Democrat to the United States Senate.

¹¹⁷ Ky. Acts 1930, c. 48. Referred to as a Model Registration Act for cities of the First Class, it subsequently became the basis of statewide reform. The 1924 Act under which the frauds occurred was specifically repealed. The Model Act for Louisville is still in operation.

¹¹⁸ Ky. Acts 1936, c. 45.

¹¹⁹ *Clark v. Ardery*, 310 Ky. 836, 222 S.W. 2d 602 (1949). The separation of powers was the basis of the decision. The lower court could have issued a mandamus compelling the Board to act, but "a court has no semblance of power to perform the function of an independent executive agency." This was true even though the Board might delay action until after the next election was over.

¹²⁰ Ky. Acts 1952, c. 134, sec. 30. The constitutionality of the law was upheld in *Wilkinson v. Queen* 269 S.W. (2nd) 223 (1954) on the ground that the legislature had not added to the qualifications of voters but prescribed regulations for ascertaining qualifications and preventing fraud. The court further held that votes cast without signatures were illegal, hence such voters could be compelled to reveal how they had voted.

though under different names, is a very definite weakness in the present system. Since one officer may shift factional and partisan control it is a source of petty bickering and jockeying for advantage between parties and factions.¹²¹ Undoubtedly, there has been great improvement since the 1920's but there can not be the best administration as long as interested parties, primarily partisan and factional politicians, operate the process. Diligent interest by circuit judges in urging grand juries to investigate whether purgation is up to date can be helpful.¹²² Administrative weaknesses were revealed in 1956, when county clerks were requested to submit the total of their registered voters to the secretary of state before elections, for a fifth of the clerks failed to comply.¹²³ The maintenance of two different boards of registration and purgation in the state's largest metropolitan county, one for voters within the city limits and the other for suburban dwellers, is of dubious merit. As the state becomes industrialized a uniform system of registration and purgation administered on a non-partisan basis is highly desirable. This will have to await some genuine non-partisan local officials.¹²⁵ Direct observation of a real non-partisan administration of an election should be convincing in its contrast with bipartisan suspicion and distrust.¹²⁶

The State and the Primary

The choice of candidates is an essential part of the party process. Sometimes, it appears to be about all that is left to political parties. In the process of regularizing nominating methods, the state has controlled many aspects of what was once

¹²¹ See for example, the struggle in Jefferson county in 1957 between local city Democratic organization and the State Administration over the third member of the Jefferson County Board of Registration and Purgation. Louisville Courier Journal, January 9, 1957.

¹²² The purgation law of 1952 commanded the juries to act. KRS 117.880.

¹²³ Lexington Herald, November 3, 1956.

¹²⁵ "The time has arrived to discard the whole theory of bipartisanship in elections, and to set up instead a responsible election organization in which the active partisan is debarred. Competent precinct officers and satisfactory office employees cannot be secured through party lists. If the party is given the selection of the persons to fill these positions, it will use them as patronage, and to serve its own ends. The best election administration in the country is to be found in places where no attention is paid to party allegiance in selecting the officers or employees. Definite fixing of responsibility for the selection of honest and capable employees is more effective than bipartisanship." Harris, *Election Administration in the United States* 9 (1934).

¹²⁶ The writer had the privilege of first hand observation of the electoral process in one of the worst areas of London during the 1955 Parliamentary election. The contrast with what frequently happens in Kentucky was startling.

regarded as purely "voluntary". In fact, legislatures and courts have been forced to determine precisely the legal nature of political parties. The changing character of social and economic life was a vital factor altering the nature of the political parties.

*The Impact of Industrialism and Urbanism
Upon the Nominating Process*

It was in the transition stage of the 1890's that the legal recognition of political parties was elaborated in the Commonwealth. In the fierce competition between retreating agrarianism and growing industrialism the relation between the selection process in nominating candidates and the nature of industrial power manifested itself. It was in 1892 that Kentucky passed its first statewide primary law thereby extending the formalizing hand of sovereignty to the informal processes of a dynamic society putting flesh and blood upon the formal skeleton of power. The fierce struggle over railroads, highways, and credit which culminated in the violent factional and party warfare of the Goebel period led to further legal controls over the party process. These prescribed new legal rules for the life of "the voluntary associations" called political parties, whose offering of nominees restricted the choice of electors in their exercise of a constitutionally guaranteed freedom of suffrage. Vast new areas for judicial definition and illumination were opened up. In fact, it was an effort to submit parts of the elective process to judicial review, but the judiciary itself in Kentucky is a part of the elective process.

Prior to 1890, the parties were free to follow their own devices in choosing candidates for office. The convention system was the general rule¹²⁷ but primaries were employed in some counties for the selection of nominees for local office shortly after the Civil War.¹²⁸ Conventions were used to select candidates for statewide

¹²⁷ Both Republicans and Democrats used conventions for nominating statewide officers shortly after the Civil War. On January 8, 1868, the Democrats called a convention (Collins, *supra* note 17 at 185). In 1871, the Democrats held a state convention with 1250 delegates representing 113 of the then 116 counties present. Two weeks later the Republicans held a state convention with 86 counties represented. Collins, *supra* note 17 at 214.

¹²⁸ A primary election was held in Harrison County on April 2, 1870. Bourbon and Scott followed with primaries in May. Collins, *supra* note 17 at 203, 208. The first state act authorizing an optional primary was passed in 1880 to apply to Bourbon, Campbell, Harrison and Kenton counties. 2 Ky. Acts 1879, c. 1018. Two years later the optional primary was extended to Boone, Greenup, Lewis,

office except for United States senators who were then elected by the state legislature.¹²⁹

The 1892 elections statute made general provisions for primary elections but first had to define the term as

an election held within the State, county, city, district or subdivision . . . by the members of any political party, or by the voters of some political faith, for the purpose of nominating candidates for office.¹³⁰

In general, the primary was made as nearly like a general election as possible given its distinctive nature. The Act was not obligatory upon the parties, for primaries were to be held only "whenever it shall be desired by the committee or governing authority of any political party to hold a primary election."¹³¹ The franchise provided "that all persons who are legal voters shall have the right to participate in such primary elections, subject to such additional political qualifications as may be prescribed by the committee."¹³² Where registration was required party affiliation might be asked and recorded and permission was granted to party officers to copy the registration list. The Act further specified that "no person whose name is not contained in such registration book . . . shall be allowed to vote or participate in such primary election."¹³³ Where no registration was required legal voters were to have the right to vote in any primary held by any political party if they conform to the conditions and qualifications prescribed by the committee or governing authority of the political party having the primary. Voters might be sworn by officers or upon demand of any "bystander."¹³⁴ Election officials were to be as equally divided among candidates as possible. The party committee was authorized to count the votes, hear con-

Nicholas, and Robertson counties. 1 Ky. Acts 1881, c. 336. Special acts were passed to apply to other counties later, for example in Magoffin county. 3 Ky. Acts 1890, c. 1614. The intensity of the struggle over nominations is shown by the fact that it required 207 ballots to nominate a successor for John G. Carlisle in the sixth congressional district when he went to the Senate. 15 Am. Ann. Cyc. N.S. 1890, 474.

¹²⁹ Stickles, *supra* note 22 at 410. Ex-governor Buckner urged a convention to choose senatorial nominees in 1895.

¹³⁰ Ky. Acts 1891, c. 65, art. 12, sec. 1.

¹³¹ *Ibid.* sec. 4.

¹³² *Ibid.* sec. 5.

¹³³ *Ibid.* sec. 9.

¹³⁴ *Ibid.* sec. 10.

tests, but were required to take an oath similar to regular election officers and were subject to like penalties.

The state did not undertake to pay the expenses of the primary, leaving all of those to be borne by the party.¹³⁵ Notwithstanding the private payment of costs, the authority of the legislature over intraparty elections appeared broad and sweeping. In a fairly early case the Court of Appeals asserted:

... we know of no restriction upon the power of the general assembly to prescribe the terms of holding such primary when they shall so elect. We are therefore of the opinion that when a political party resorts to the primary as a method of selecting their candidates whose names are to go upon the official ballot under the device of the party, such primary must be conducted in accordance with the requirements . . . of the statute on elections.¹³⁶

The question arose as to whether the party officials were state officers when they were discharging duties prescribed for them by statute in the exercise of functions in a "voluntary association." The Court put the party election "officers" within the penumbra of "quasi" officials.

While those who constitute the membership of the governing authority of a political organization are not officers in the technical meaning of that term, the duties required of them by the statute are official in character because they must be performed as therein prescribed, and penalties are provided by the statute for the failure to so perform them.¹³⁷

The tendency of the courts was to narrow the discretion of the party official in his party aspect and to enlarge his responsibility in his *state* capacity. Where a county committee had called a primary under terms of the statute, a competing committee—even with the approval of the chairman of the state governing authority—could not cancel the primary. The Court construed the authority of the state chairman under party rules as too limited to take such action. The opinion further declared:

¹³⁵ *Ibid.* sec. 15.

¹³⁶ *Brown v. Republican County Executive Committee*, 119 Ky. 720 at 723, 68 S.W. 622 at 623 (1902).

¹³⁷ *Mason v. Byrley*, 26 Ky. L. Rep. 487 at 490, 84 S.W. 767 at 770 (1904).

It is proper to express this view, because the committee conducting the primary became officers under the primary election law, and are entitled to protection in discharge of their duties without interruption or hindrance by the unauthorized body which was sought to be constituted for that purpose because the committee disregarded the attempt to call off the primary.¹³⁸

The Court found the issue involved not to be a political but a legal one. Even though the parties (the candidates, in fact) paid for the primaries still the action of the party officials was taken in a legal capacity. The change in the new constitution has altered the situation.

When elections were conducted under the viva voce system or by ballots furnished the electors by the candidates or their friends, [they still were at the primary] no such question as is involved could arise. Since the adoption of the official ballot system by the Constitutional Convention, since the legislative branch of the State government provided for the regulation of primary elections by law, questions involving the legal rights of individuals will arise for the determination of the courts. [Changes in organic and statutory law of the state have given the courts the added responsibility of deciding such questions] even if perchance some one should fail to discriminate between political rights and those legal rights which arise under the law, and declare the court was adjudicating purely political questions.¹³⁹

Once the party authority had determined upon a primary as a nominating device, no further restrictions could be placed upon candidates. Thus when the governing authority sought to preclude the candidacy of a governor on the grounds that he was constitutionally ineligible, the Court forbade it.

. . . the committee had no right to raise the question of the appellee's eligibility to re-election to the office of governor. The governing authority of the party has no right to determine who is eligible under the laws of the land to hold offices. It can call primary elections and make proper rules for their government, but has no right to say who is eligible to be a candidate before the primary. The persons who are

¹³⁸ Neal v. Young, 25 Ky. L. Rep. 183 at 186, 75 S.W. 1082 at 1083 (1903).

¹³⁹ Ibid. at 186, 75 S.W. at 1083.

entitled to vote at the primaries are the ones to determine who shall be selected as their candidates for a particular office. If the committee can say who is and who is not eligible to be nominated as the party's candidate for office, they can, on the very last day before the ballots are printed, refuse to allow a person's name to go on the ballot upon the pretext that he is ineligible. . . .¹⁴⁰

In its further delimitation of the authority of party officers the Court argued that to grant such power as claimed would remove such persons from reach of mandamus. The fact that party officers were required to take an oath was important. "The Legislature has seen proper, as it were, to take charge of them, and, to secure fairness in the conduct of same, has provided penalties for the violation of the law."¹⁴¹

The next stage in the development of the primary arose in connection with the direct election of United States Senators. Not only had the struggle for the nomination for governor in the Democratic convention in 1899 been marked by disgraceful scenes but the selection by the legislature of a senator in 1896-7 had been surrounded by circumstances tainted with violence and fraud. Nearly all members of the legislature were reported to be armed and the governor called out the militia to protect the orderliness of proceedings. With both political parties split on the free silver issue, no majority was obtained. A temporary appointment was made and a special session called to elect a senator. Bribery was charged against one candidate, who, after being cleared of the charge, withdrew, and another, the first Republican to be elected to the United States Senate from Kentucky, was chosen.¹⁴² In 1908, another bitter factional fight in the legislature led to the election of a second Republican to the Senate amidst charges of bribery.

In 1912, just before the seventeenth amendment became effective, the General Assembly provided that nominations for senator should follow the same procedure as in other statewide offices.¹⁴³ The role of party in public affairs received more clarification as a result of this action. One hundred and twenty years after the

¹⁴⁰ *Young v. Beckham*, 115 Ky. 246 at 252, 72 S.W. 1092 at 1093 (1903).

¹⁴¹ *Ibid.* at 253, 72 S.W. at 1093.

¹⁴² 1 Am. Ann. Cyc. 3d series 1896, 376 and 2 *Ibid.* 1897, 437.

¹⁴³ Ky. Acts 1912, p. 48, c. 7, sec. 2.

formation of its first constitution, Kentucky's highest court, in discussing the nature of a primary election, undertook to define political parties. In *Hager v. Robinson*, the Court declared:

Political parties are voluntary associations of electors, having an organization and committee, and having *distinctive opinions* on some or all of the leading political questions of controversy in the state, and attempting through their organization to elect officers of their own party *faith* and make their *political principles* the *policy* of the government. They are governed by their own usages and establish their own rules.¹⁴⁴

This definition pays lip service to Edmund Burke's classic definition of a political party as "a body of men united, for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed."¹⁴⁵ At the same time the Court paid heed to the practical function of parties, namely, to nominate candidates for office. The "realist" school of parties says that a party is "an organized group that seeks to control the personnel and policy of government."¹⁴⁶

Perhaps fortunately for judicial peace of mind, the Court has not been compelled to define the differences of *principles* or *policy* which separate the contemporary parties in Kentucky nor to distinguish—in the light of the last half century of Kentucky political experience—the nature of faction and its unique quality differentiating it from party.

Only once in this century, 1931, has the majority party resumed nomination by convention for statewide office. The minority party has chosen its candidates by convention more frequently than otherwise. The adherents of the convention system argued that the absence of a factional struggle for power in bitterly contested primaries gave the Republicans their best chance for victory. However, the intense fight which ensued (1931-35) between the two chief leaders of the victorious party following its convention in 1931 tended to destroy the contention that conventions produced party harmony. However, the administration

¹⁴⁴ 154 Ky. 489 at 505, 157 S.W. 1138 at 1145 (1912). Emphasis supplied.

¹⁴⁵ "Thoughts on the Cause of the Present Discontents," in *The Works of Edmund Burke* 474 (1861).

¹⁴⁶ Penniman, *Sait's American Parties and Elections* 161 (4th ed. 1948). One may ask how to distinguish a party from "interest" groups by this definition.

in power was strong enough to dictate a nominating convention to the central committee through control over patronage, notwithstanding the powerful opposition of the President of the United States and his emissary the senior Senator, Alben W. Barkley, shortly to become senate majority leader. The tactical blunder of the governor in leaving the state enabled the lieutenant governor to call a special session of the legislature to enact a compulsory primary law. This in turn led to a struggle in the courts resulting in a narrow decision (four to three) for the lieutenant governor. In the factional struggle the legislature set up a dual primary law modelled on that of southern states.¹⁴⁷ When the lieutenant governor won the nomination for governor in 1936 he championed the cause of a compulsory single primary. After his election, a new statute was passed making primaries compulsory for the two major parties.¹⁴⁸ Finally, the legislature has undertaken to define political parties.

A political party is an affiliation or organization of electors representing a *political policy*¹⁴⁹ and having a constituted authority for its government and regulation, and which cast at least twenty percent of the total vote cast at the last preceding election at which presidential electors were voted for.¹⁵⁰

The control of parties over their membership is now limited, for registration "shall constitute prima facie evidence only of his [a voter's] right to vote" though ballots may be refused for other

¹⁴⁷ Ky. Acts, special session, 1935, c. 1. The governor wanted no primary but thought a double primary law would result in a legislative deadlock and no law, or if passed, the first primary would enable the administration-backed candidate with the aid of patronage to run first and in the "run off," or second primary, patronage voters would vote a second time while others would tire and fail to vote. The opposing faction was induced to accept the view that other defeated candidates would unite behind the second man in the final primary. In the result, this happened in the 1936 primary with two candidates aiding the "runner up" and one, the first runner. At any rate, the "runner up" won the final primary by a wide margin in a huge turnout of voters. It is not unlikely that many Republicans participated in the exciting primary.

¹⁴⁸ Ky. Acts 1936, c. 52, sec. 1. "Each and every political party . . . shall nominate all of its candidates for elective offices to be voted for in the general elections in a primary election to be held . . . [as] provided by law." Provision is made for other groups not constituting a political party to offer candidates.

¹⁴⁹ This smacks of tautology. Perhaps "political" is to be distinguished from social, economic, and religious policies.

¹⁵⁰ KRS 119.010. Somewhere between 1912 and 1955 the realistic view of a party as primarily an organization with a continuing name nominating candidates won out over the view of parties as representing principles.

legal reasons.¹⁵¹ A primary voter is required to have the same qualification as voters in regular elections. He must be "a registered member of the party whose ballot he seeks to vote, and must have been registered as a member of that party at the time of the preceding regular election." A registered voter can vote in no party save the one in which he is registered.¹⁵² Primary elections have taken on the characteristics of final elections to the extent that "primary elections shall be conducted substantially as provided by law for regular elections." The governing authority of a political party is left free primarily to make its own rules not in conflict with statutes and to nominate candidates for filling vacancies that occur not less than seventy days before the primary.¹⁵³

Only in nominating candidates for president and vice president is the convention system still in existence, but this is the occasion for determining the control of the party machinery. This was demonstrated dramatically in 1956 when the state administration effectively destroyed the control of the senior senator by organizing local and state conventions. Since the second Hatch Act made it illegal for persons receiving federal funds, in whole or in part, to participate in politics, the state highway commissioner has ceased to be national committeeman. The practice for more than a decade has been for the governor to hold the job.¹⁵⁴

The result of sixty years of state intrusion into the internal affairs of political parties in Kentucky has been to reduce parties to agencies of the state to nominate candidates for office. Party membership is now meaningless, consisting of nothing more than the act of registering under the party label. Even party apostasy may not be punished, for a defeated candidate for nomination is

¹⁵¹ Ky. Acts 1936, c. 45, sec. 8.

¹⁵² KRS 119.200.

¹⁵³ In 1956, the primary date was moved from August to May. The death of Senator Barkley on April 30, 1956, left the nomination of a Democratic candidate in the hands of the existing governing authority, namely, the Central Executive Committee of the party. The party organization was controlled by the faction of the party defeated in the preceding (1955) gubernatorial primary. The two factions were unable to agree upon a compromise candidate; hence the committee's nominee—and also the nominee chosen in the primary to fill the other senate seat—represented the group intensely opposed by the incumbent state administration. This was a very important factor in the minority party winning two senate seats and almost controlling the United States Senate.

¹⁵⁴ In the last Republican administration the governor's wife was national committeewoman.

not bound by any legal sanctions to support the successful candidate.¹⁵⁵ A voter need never vote for the party upon whose rosters he is registered. He need maintain only a not too indiscreet silence.

Currently there is discussion of enacting a compulsory presidential preference primary which would further destroy the effectiveness of the "voluntary" organized activity of the political parties and absorb parties even further into the machinery of the state. With the development of technology and the integration of administrative control in the hands of the chief executive, party machinery has likewise become a tool of the governor.

Finally, the question arises how the dominant party retains its control. The answer lies in the method of legislative apportionment and districting. These are tools in the possession of the legislature but with integrated administration, in the absence of a civil service device for selecting state employees, the executive dictates the lines of districting. In the only extensive redistricting done within the century, the governor linked his factional and patronage authority with the support of the minority party to force a partial readjustment to the population trends of fifty years. The congressional reapportionment of 1952 was factional in intent as well as partisan. One of its effects was factional defeat in the primary of 1955. Counties were reshuffled among congressional districts again in 1956 for purposes of factional advantage to the new victors. The real decision was made in the gubernatorial primary of 1955 on the basis of personalities rather than issues.

When the minority party wins the executive branch, the legislature always represents the opposition. The governor must employ patronage as a means of achieving his legislative or policy program or may be almost completely stripped of executive authority as happened in 1927-31 when the legislature and executive were divided in party allegiance.

Gerrymander and the Party Process

A major factor in Kentucky's being a dominant party state instead of a real two party state is the presence of legislative and

¹⁵⁵ Opinion of Attorney General reported in Lexington Herald, October 25, 1956.

congressional gerrymandering.¹⁵⁶ Kentucky has never had a completely Republican legislature, though four Republican governors¹⁵⁷ have been elected and served out their terms of office. For one fourth of the last sixty years, executive and legislative departments have had divided party allegiance.

The result of this constant factor of gerrymander is to blunt the effect of party in policy making¹⁵⁸ and to strengthen the role of pressure groups, patronage, and personality as features in the field of public action. The fact that the major party has a built-in legislative majority which is enhanced when the dominant party wins the governorship does not tighten the lines of discipline in the dominant party but rather makes the party primary the source of intense factionalism in which factions develop many of the characteristics of parties.

Frequently, elements of three party action manifest themselves. The dominant faction in the majority party is compelled to bargain with the minority party to obtain a legislative majority to enact its legislative program. This heightens the patronage element in legislative policy determination and fosters highway construction and welfare programs which follow an erratic and incoherent direction in order to obtain any policy action at all. The executive becomes a broker or a clearing house among contending geographic and functional pressure groups seeking to control the spending of limited public funds paid by all the people presumably for the benefit of all. Party ties are loosened by unwieldy majorities and hopeless minorities. The minority party becomes a tool of the majority faction of the dominant party and personality and patronage replace party as the chief influences in policy determination. The development of "personalism" in government, frequently assigned a major role in the lack of democracy in the South American Republics, comes to play a similar role in Kentucky. A watchful opposition in a position to take advantage of

¹⁵⁶ For a discussion of the problem of districting see Legislative and Congressional Redistricting in Kentucky, 1951, by staff of Department of Political Science of University of Kentucky.

¹⁵⁷ This does not include William S. Taylor who was sworn in in 1899 but in the confusion over the Goebel assassination fled the state. In 1895 and again in 1919, Republicans won majorities in the House of Representatives.

¹⁵⁸ The advocates of the dominant party frequently use as an argument for the election of a governor of the same party the necessity for harmony between the executive and the legislative departments. This would make, under a gerrymander, a permanent one party state.

the blunders of an incumbent party and with a genuine opportunity of itself coming to power is an effective safeguard of liberty as the British system of government has long demonstrated. An active and alert opposition party may well be a more potent device for maintaining the precious liberties which Kentuckians have been at great pains to incorporate in all their constitutions than the judicial process (quasi-partisan in nature) upon which citizens are presently dependent.

For over eighty years Kentucky's party battles for the presidency have been conducted within a sixty to forty per cent frame of reference with neither party getting more than three fifths of the votes nor below two fifths. Representation in Congress has not followed this pattern but rather a nine to two, eight to two, seven to two, and now a six to two ratio. This distorted picture has been duplicated in the General Assembly thereby weakening party government.

One Party Government in Counties

One party government is the pattern in about one hundred of Kentucky's one hundred and twenty counties. In fact, only seven counties fall in the genuinely doubtful class if the test of the way they have voted in the last twenty-three presidential elections is applied. The period from 1868 through 1956 really marks the period of competition between the two old parties. Actually, twenty-three counties have never voted anything but Democratic since 1868 or since their creation (three in this group). There are eleven Republican counties which have never voted Democratic in the same period. Two of these, created since 1868, have always voted the same way. Accordingly in thirty-four counties, Democracy or Republicanism represents a consensus which is so strong that opposition has been hopeless. Primary elections determine the personnel and policy of local government and the factional complexion of party life. Persons chosen in these local contests usually form the body of workers in the party network called "the organization" in each party. The fact that over one-fourth of the local units always vote the same way reflects only part of the solidarity of party tradition. There are twenty-one additional counties which have voted Republican only once (seventeen of them in 1928) and four Republican counties which have voted

Democratic only once, three of these more than eighty years ago and one by a slight plurality in the three-way race of 1912. This means that fifty-nine counties or almost exactly one half are solidly one party or the other. There are seventeen other counties that have departed from the dominant party only three times in ninety years. The minority party has no chance of victory unless there is an economic and social upset or the mores are profoundly affected by war or religion.

This stifling of two party government at the grass roots confuses, blurs, and defeats meaningfulness in the party process. Persons with political aspirations (people who need encouragement in a culture which proclaims democratic values but discourages active political leadership) must start at the bottom. But in fully two-thirds of Kentucky's counties one must belong to the dominant party to obtain local public office and in ninety per cent of the counties it is a severe uphill fight to win against the majority party. This defect may put temperamental Republicans in the Democratic party and policy Democrats in the Republican party. The process feeds upon itself and makes political affiliation represent too often a local protective coloration instead of a genuine policy point of view. Another consequence is the confusion of the party process at state and national levels as well. In so far as voters are deprived of real choices, the suffrage becomes less meaningful, and the voter's sense of frustration increases. This may be one reason for the smaller percentage of participation manifested in Kentucky's elections than among certain European peoples, and in other states in the Union. Making choices is frequently asserted to be a basic factor in developing mental alertness. The English philosopher, John Stuart Mill, contended that the development of the intellect in making choices was a principal advantage of representative government.

The Influence of Technology on Politics

In the meantime, the voting process has been powerfully affected by the development of technology. The introduction of the automobile has, within a half century, resulted in a vast centralization of political power in state government and an enormous integration of authority in the chief executive. The control of highways is more essential to political power today than the in-

fluence of railways was in the last half of the nineteenth century. The Kentucky Highway Commission is less than a half century old but the demand for good roads fostered by the horseless carriage and encouraged by federal grants-in-aid has given to the leaders of state political organization a powerful weapon for controlling local organizations and directly and indirectly influencing political behavior. The fact that Kentucky is more rural than industrial with a population larger than its job opportunities, while agriculture is in decline, gives added appeal to public work. The chief form of state jobs is highway employment though school bus driving and local road construction may assume significance in local elections. The quest for public jobs is a factor of primary importance in contemporary Kentucky politics. The continuation of the spoils system with partisan and frequently factional domination of local election machinery leaves very little "policy" in elections.

*Political Participation in Kentucky
Compared With That In Selected Areas*

Perspective upon the political process in Kentucky may be gained by comparison with that of other states and foreign countries. Norway in its fifty years of national independence has never known an electoral scandal involving either fraud or violence.¹⁵⁹ Issues of race and denominationalism are not present in that country where 97.5% of the people belong to one church and the only minority is a small migratory one of Lapps. Two of the most violently emotional issues of politics are therefore eliminated. No bitter memories of sectional strife have differentiated parties and divided even families for generations. Yet voter participation has been unusually high with approximately 80% casting their ballots.

The highest voter participation in Kentucky in modern times was in the first Bryan battle when 88% of the potential electorate voted. The two subsequent Bryan campaigns and the Wilson-Hughes fight of 1916 brought turnouts equal to those in Scandinavian and some other European countries but after the enfranchisement of women the depression election of 1932 represented

¹⁵⁹ Conclusion based upon personal interviews with officials and party leaders in Norway by the writer during the year 1954-55, made possible by a Fulbright Research grant.

the high water mark of voter participation. In Belgium where voting is compulsory voter participation runs about 90%.¹⁶⁰

*Comparison of Percent of Voter Participation in Kentucky and Norway in Presidential and Storting Elections 1920-1952*¹⁶¹

Kentucky		Norway	
Year		Year	
1920	71.2	1921	67.9
1924	60.5	1924	69.9
1928	66.6	1927	68.1
		1930	77.5
1932	67.1	1933	76.4
1936	59.7	1936	84.0
1940	59.1	a	
1944	53.1	1945 ^b	76.4
1948	50.3	1949	82.0
1952	57.5	1953	79.4

^a No election 1940-1944 because of German occupation.

^b Elections on four year instead of three year basis after 1940.

Religion As a Factor in Kentucky Politics

Notwithstanding a broad and sweeping declaration in favor of freedom of worship in the first¹⁶² and all succeeding constitutions of the Commonwealth, religion, as a matter of fact, has been an important element in the political decisions of the electorate. To begin with, large numbers of the original settlers were Baptists seeking freedom from legal disqualifications in Virginia.¹⁶³ The struggle over slavery was in part a battle between those who put property first and ministers who wanted to stop the ownership of human beings.¹⁶⁴ Beneath the surface religious dogma and sectarian differences have profoundly affected Kentucky's political behavior. It was an important element in the struggle for both elementary and higher public education in the state. The fact that the president of Transylvania University, a Unitarian, had replaced a Presbyterian was used by Jacksonians against Clay and

¹⁶⁰ Tingsten, *Political Behavior 190-191* (1937).

¹⁶¹ Table compiled from Shannon and McQuown, *Presidential Vote in Kentucky 1824-1928*; Shannon, *Presidential Politics in Kentucky, 1952* (1954); *Statistical Survey, 1948* (published by The Central Bureau of Statistics of Norway, Oslo, 1948) and *Statistisk Arbok For Norge, 1954* (Oslo, 1954).

¹⁶² Ky. Const. (1792) Art. XII., sec. 3.

¹⁶³ Brown, *supra* note 6 at 52.

¹⁶⁴ Young, *supra* note 8 at 34; Brown, *supra* note 6 at 224.

Adams in 1828.¹⁶⁵ Henry Clay once objected that religious prejudice against the Whig candidate for governor was decisive in his defeat.¹⁶⁶

In the 1850's antagonism to Roman Catholicism, combined with opposition to all foreign immigration, led to the formation of the American or "Know Nothing" party which dominated Kentucky politics for nearly a decade. Not only did Kentucky elect a "Know Nothing" governor in 1855 but it also gave great support to Millard Fillmore for president in 1856.¹⁶⁷ Violence broke out in Louisville leaving a lasting and bloody monument to intolerance.¹⁶⁸ Though this outburst of violence represents a high water mark of religious passion, recurrent episodes have demonstrated the pervading influence of religious sentiment as a factor in political behavior. The Populist movement and the Farmers Alliance were such evidences in the 1890's. No Catholic has been elected governor. One such possibility withdrew in 1911.¹⁶⁹

In the 1928 presidential campaign, Kentucky was a center of anti-Catholic sentiment and it is significant that Mr. Hoover received the largest proportion of the popular vote ever given to a presidential candidate in modern times, 59.3%.¹⁷⁰ Counties which had never cast a majority vote for a Republican candidate before or since did so in 1928, some of them for the only time since 1840. For whatever reason, some Catholic areas shifted allegiance in the 1950's, especially in the presidential election of 1956.¹⁷¹

Money and Politics

No discussion of the political process is adequate without giving consideration to the role of money in obtaining the consent of

¹⁶⁵ Weston, *Presidential Election of 1828* 167 (1938).

¹⁶⁶ Clay Mss. in Library of Congress.

¹⁶⁷ 46.5% of the voters voted for Fillmore in 1856. Shannon and McQuown, *supra* note 9, at 31.

¹⁶⁸ McGann, Sister Agnes. *Nativism in Kentucky to 1860*, c. IV, "A Bloody Election," p. 86-112 (1944). The absence of adequate police protection and too large election precincts are suggested as administrative failures.

¹⁶⁹ Congressman Ben Johnson of Bardstown. However, Catholics have been elected to other state offices. The O'Connell family, father and son, had a long period of office holding.

¹⁷⁰ Shannon and McQuown, *supra* note 9, at 104-106. Roosevelt approached this in 1932 with 59.1%. Tilden's 61.5% in 1876 was the last time such a preponderance had been reached. Only Henry Clay in his first race (1824) and William Henry Harrison (1840) had exceeded this upsurge aside from the two Civil War elections.

¹⁷¹ Marion and Nelson counties voted Republican for the first time in their histories. Kenton county joined the Republicans for one of the four times in her history.

the governed. Evidence of money has been seen already in the early history of Kentucky both in practice and in legislation. It was not until the 1890 constitution that elaborate efforts were made to control the impact of corporate wealth upon the popular process.¹⁷² In 1916, the legislature enacted a detailed Corrupt Practices Act prohibiting corporations and "associations"¹⁷³ from giving anything of value to candidates or parties. Ceilings on contributions prohibitively low in view of realistic practices of today were established for elective offices.¹⁷⁴ Only a slight modification has been made since.¹⁷⁵ The effectiveness of these laws is very dubious.¹⁷⁶ Decisions of the Court of Appeals frequently frankly recognize the *de facto* situation. Prior to the passage of legislation in 1905, over \$100,000 was spent in Louisville in a single campaign for local offices, \$85,000 by the Democrats and \$20,000 by the Fusionists. About \$30,000 was spent on registration day alone.¹⁷⁷

After the passage of the Corrupt Practices Act the situation did not greatly change. In *Beauchamp v. Willis*, for example, the Court recognized the use of \$15,000 by the slate of candidates favored by the Louisville Republican organization. The opinion observed, quoting an earlier case:

The custom has grown up in both parties of paying election officers a sum in addition to the legal compensation. This practice should not be countenanced by any political party.¹⁷⁸

Likewise in the election of 1925 in Louisville, nearly \$200,000 was spent in a single campaign, \$50,000 by the Democrats and \$140,000 by the Republicans.¹⁷⁹ On election day the Republicans

¹⁷² See Ky. Const., sec. 150 and 151.

¹⁷³ Whether this applies to trade unions is not clear.

¹⁷⁴ Ky. Acts 1916, c. 13.

¹⁷⁵ The ceiling for candidates for local office in a county having a city of first class was raised in 1928. Ky. Acts 1928, c. 160.

¹⁷⁶ Both candidates in the heated Senatorial primary of 1938 disclaimed knowledge of any sums expended in their behalf. However, investigations by the Senate Campaign Finance Committee disclosed sums collected on behalf of both nominees far in excess of the legal limits. This campaign was responsible in considerable measure for the passage of the Second Hatch Act. 86 Congressional Record, *passim* (1940).

¹⁷⁷ *Scholl v. Bell*, *supra* note 112 at 773, 31 Ky. L. Rep. at 346, 102 S.W. at 255 (1907).

¹⁷⁸ 300 Ky. 630 at 633, 189 S.W. 2d 938 at 939 (1945).

¹⁷⁹ *Taylor v. Nuetzel*, 220 Ky. 510 at 528, 295 S.W. 873 at 881 (1927).

were shown to have had at least \$32,000 in \$1 and \$5 bills. The majority opinion reflected upon the tragic "decline" in civic virtue.

It is a sad commentary on present day politics that candidates and political parties must pay for almost every character of service rendered in elections. Political ties and patriotic impulses seem no longer sufficiently potent to impel many voters to discharge their duties as citizens.¹⁸⁰

Following the election in 1927 of a Republican governor but other state officials who were Democrats in a campaign centered around the system of pari-mutuel race track gambling, *quo warranto* proceedings were started under section 150 of the Constitution against the Kentucky Jockey Club to dissolve its charter since the Club was alleged to have committed offenses against statutes of the state "designed to prevent and punish corrupt lobbying and pernicious political practices."¹⁸¹ However, the Jockey Club had already forfeited its charter so the Court of Appeals held that no action could be taken.¹⁸²

In summary, the only fair conclusion is that the provisions of the Corrupt Practices Act are totally unrealistic and that practice differs widely from what the statute provides.¹⁸³

The assessment of state employees for political purposes has long been a disputed issue with all factions and parties engaging in the practice. In 1936, the practice of assessment was made

¹⁸⁰ Logan, J., id. at 529, 295 S.W. at 882.

¹⁸¹ Commonwealth v. Kentucky Jockey Club, 238 Ky. 739, 38 S.W. 2d 987 (1931).

¹⁸² Two Judges (Logan and Rees) thought enough was alleged "to show such a continuing and persistent intention on its part to corrupt the General Assembly as to warrant a forfeiture of its charter had it not been surrendered." Id. at 776. Three Judges (Richardson, Thomas, and Willis) thought the allegations sufficient "because the dissolution of the charter of the parent company and the creation of new corporations to continue the same business in the same manner, with the same property, for the same purposes, and for the benefit of the same persons, should not affect the case at all. Rather it should constitute a confession that the original position of the Kentucky Jockey Club could not be defended." Id. at 776. All the Judges agreed that injunctive relief could not be granted to prevent violation of criminal statutes. A majority of the court thought a criminal conviction must apply to the Kentucky Jockey Club first and that *quo warranto* was an improper remedy.

¹⁸³ It is frequently stated that a strong campaign for governor will cost no less than \$100,000. The writer discussed the matter a few years ago with a campaign manager for a successful candidate for governor. He claimed not to know the exact figures, such matters being left to the finance chairman. My interviewee felt that between \$50,000 and \$100,000 was a fair estimate.

illegal but with doubtful results in effectiveness.¹⁸⁴ The only attempt at prosecution resulted in a divided jury and the failure to go to trial again.¹⁸⁵ The "assessment" or "voluntary" payment of party dues is still existent in local government. The practice received wide publicity in Louisville and Jefferson county early in 1957.¹⁸⁶ The development of the new media of communication has produced increased costs for candidates in Kentucky as elsewhere. The consequences are as yet unclear.

The effectiveness of Federal legislation (Hatch Act of 1940) has not borne out the prophecies of some of its proponents. In March 1940, Kentucky's then Junior Senator predicted:

There will not be any effective political State machine in my State if this bill is passed. . . . If this bill passes—and it ought to pass—as soon as the legislatures of the several States can get to it, they will make it just as effective in regard to the people who are left.¹⁸⁷

Fifteen years later, the same individual ran and defeated the existing state "machine" in a gubernatorial contest, and the following year took over the dominant party organization. There is still no "little" Hatch Act.

Courts and the Political Process

The absence of a monarch in republics to serve as a symbol of traditional unity makes the party process more difficult. In the Federal system, the courts serve as cushions between majorities and minorities and as referees on certain aspects of party disputes. In Kentucky, judges are part and parcel of the elective process

¹⁸⁴ Ky. Acts 1936, c. 49. Employees of the State Highway Commission were singled out by name. In sec. 3 the definition of "assessment" was restricted to "fixing of any amount, or amounts, to be given in money by any employee or employees, and the soliciting of such or any amounts in money from a person or persons so assessed."

¹⁸⁵ The indictment was brought against the then Commissioner of Welfare who was Democratic Finance Chairman. The Commonwealth's Attorney was a Republican. The accused denied that he knew of the letters which carried his signature in stencil.

¹⁸⁶ Louisville Courier Journal, January 29, 30 and February 2, 1957. Funds collected from city and county employees became a factor in the struggle between city and county officials over merger of city and county areas. The friction arose just before the Democratic "organization" chose candidates for "endorsement" in the 1957 municipal and county races for local offices. The mayor withheld funds for a length of time apparently as a bargaining weapon in a contest for "power" in the party organization. Later, labor unions threatened to employ a similar method in attaining their objectives against the city.

¹⁸⁷ 86 Congressional Record, p. 2701 (1940).

since all judges are popularly elected. Though provision is made for non-partisan or bipartisan elections, the partisan composition of the state's highest court frequently depends upon the accident of national or state leadership. Judges are carried into office by presidential or gubernatorial landslides. Factional alignment as well as partisan affiliation may come to play an important part in the selection of judicial personnel. Sometimes the highest court becomes involved in partisan and factional disputes. In the "Old" court-"New" court dispute of the 1820's, the state had two rival courts for a considerable time.

In the heated Goebel election of 1899-1900, the Court of Appeals split on partisan lines 4-3. A dissenting judge did not hesitate to call attention to the change in the personnel of the Court. Speaking of the effort of the constitution makers to free the courts from politics, he observed:

No sadder illustration of their wisdom in keeping political questions from the judiciary can be given than the history of this court for the past ten years. In a number of decisions, rendered unanimously the power of the Legislature to create boards to settle election contests was upheld and recognized. . . . Then on all questions as to its validity the courts divided, and stood four to three. For four years the majority opinions followed the previous rulings. . . . Now, after a change in the personnel of the court, by the same vote of four to three, all this is overturned, and the opposite conclusions established.¹⁸⁸

Even members of the United States Supreme Court differed sharply upon this celebrated contest. Mr. Justice Harlan, a native Kentuckian and a Republican, vigorously attacked the majority for failing to apply the Fourteenth Amendment.¹⁸⁹

Again, in 1935, the court divided 4-3 over the legality of the revocation by the governor of a call of the legislature into special session by the lieutenant governor while acting as governor.¹⁹⁰ In 1957, partly as a result of intra party bickering, the executive and

¹⁸⁸ Hobson, J., in *Pratt v. Breckinridge*, 112 Ky. 1 at 47, 23 Ky. L. Rep. 1356 at 1379, 65 S.W. 136 at 149 (1901).

¹⁸⁹ *Taylor v. Beckham*, 178 U. S. 548 at 609, 44 L. Ed. 1187 at 1203, 20 S. Ct. 890 at 1009 (1900). It is worth noting that Harlan wished to expand the "liberty" of the Fourteenth Amendment to something like its present proportions.

¹⁹⁰ *Royster v. Brock*, 258 Ky. 146, 79 S.W. 2d 707 (1935).

judiciary were locked in a fierce struggle for power involving the appointment of a Clerk of the Court of Appeals.

The last two Republican governors were former judges of the Court of Appeals, one going directly from the Court to the governorship. Two other nominees of the party were Court of Appeals judges and twice the same judge from the circuit bench was the Republican nominee. One Democratic governor came directly from the circuit bench while two or three of his rivals for the nomination were likewise judges. Judicial appointments are sometimes promised in advance of the deaths of aged judges, and new judicial districts are created to provide for legislators who wish better paying permanent jobs. Occasionally judges are caught up in bitter primary fights where the results are in doubt and even the honesty of the court thrown in question.

For all of these reasons, both justice and integrity are sometimes challenged, casting a shadow upon the foundation of civic order. The absence of a non-partisan judiciary to which election contests may be taken may affect confidence in the electoral process. The removal of election contests from legislative to judicial decision is credited with a great improvement in elective procedure in England. Certainly the removal of judges from the exigencies of partisan and factional struggle would go a long way in improving the reputation of Kentucky justice and the development of a "public policy" less colored by personal and group interest. As it is, the political process is essentially a patronage process rather than a policy one. The struggle for personal power has full play without any buffers of party to blunt the edges of clashing ambitions.

Summary and Conclusions

One century and two-thirds of another has elapsed since Kentucky in a simple frontier environment embarked upon the noble experiment of a government based upon consent of the governed. From a group of yeomen assembling in the court house yards or in the home of a neighbor "publicly and personally" to proclaim their choices of men and policies before judges who knew them personally or who could if necessary require an oath of eligibility, the democratic process has been systematized and brought under the influence of technology. In the first sixty years of its existence,

elections might last for three days. Today, a fourth of the electorate casts its vote by pulling a lever, and all the voters of the state are registered for eligibility with comparative signature cards a requirement. For all practical purposes there are two annual elections instead of one. The once informal procedures of the "voluntary associations" called political parties have fallen under the formal procedures of sovereignty, and the differences of "political policy" have become largely traditional with only different labels as the last vestiges of distinction. Barriers of race have been raised by the state only to fall by Federal action. Sex exclusion has fallen likewise by national act and the prerequisites of age have been lowered by the state. Starting with a few thousand, the number of votes now exceeds a million. The Commonwealth has oscillated between a genuine two-party system and periods of near one party dominance. Today factionalism and personality loyalties are more active than religion, race and property in the facade of political struggle but like icebergs the great emotional issues lie partially hidden under the surface.

There is little or no evidence that the rational process plays a greater part in political determinations than it did in 1792. The appeals to the non-rational are as virulent in 1957 as in 1792. The state has assumed the burden of administering and paying for the process not only for choices between parties, but within parties as well, but has done nothing to assure that the result will represent more intelligent policy conclusions. It is true that the state requires all potential voters to attend public schools for a stated number of years but other than mastering the simplest rudiments of human communication little is achieved by way of civic education. Meantime the science of psychology has developed a vast battery of devices for channeling the primitive urges of men. At first devoted largely to the economic arena, these techniques are being increasingly turned to the political with startling results.

The media of communication including vast technological discoveries undreamed of by the valiant band of democrats at Boonesboro have been developed. These new media are monopolistic by nature and the old medium (the press) has become centralized, partly monopolized and stereotyped. No wisdom can come from the ballot box which was not put into it. Parties were the natural instruments for sharpening up policy alternatives to

make suffrage meaningful and to serve educational purposes, for it is in choice that the intellect develops—the mind grows. In listening to debates, arguments, and the presentation of evidence, the mind may develop the capacity to draw inferences, the essence of policy conclusions. The reduction of parties to the role of meaningless historic symbols without rational significance has robbed them of civic educational influence. Loyalty to the chief (leader), an appeal which must have been compelling to *pithecanthropus erectus*, has been substituted once more. Perhaps before the second century of the Commonwealth is completed, the state will need to supply media to parties and candidates as well as ballots and voting machines so that rationality as well as emotion may help determine the issues of an atomic age.

The ingredients of politics in Kentucky have been divergences in region, property, religion, race, and loyalties to personalities. To develop a set of coherent principles out of this motley array of conflicting interests has been the task which has fallen to Kentucky's political leaders. Though not based completely upon the cynic's definition of politics as "the organization of hatreds" yet it has been true frequently enough to give pause to the most ardent defender of the democratic process.

The formal structure of Kentucky's constitutions has provided for the party process by setting up an election procedure which, though not mentioning parties, makes their existence well nigh imperative. Legislation leaves the parties free to determine only their own working rules and internal common law. In Kentucky, as elsewhere, the effort of the state to regulate the procedure of nomination of candidates (the single practical function of parties) has brought the judicial and legislative process to bear upon parties.

Party attempts to insist upon "loyalty oaths" as a device of party discipline have failed. After this failure steady decline set in for any form of party discipline. Repeatedly party leaders have overtly and covertly opposed policies or personalities of their own parties in elections. In one notable case a successful nominee for United States Senator refused to endorse his party's national platform, though his election was unquestionably brought about by the popularity of the national ticket.

Today, in Kentucky, political parties are a means of administering the electoral process and a device for selecting personnel. The policy making function is largely lost. Since the introduction of the compulsory primary the parties have not taken the trouble to frame platforms in statewide contests. Individuals seek nominations on the basis of selling certain vague policy views frequently advanced by pressure groups which become the creators and advertisers of policy. Parties offer chiefly historic labels to be employed by patronage machines to attain power for personal or factional advantage. Rivalry for power may be far more intense within the parties than *between* the parties. Parties have abdicated to pressure groups their natural function as adult civic educators.

Suggestions For Improvements

1. Administration

One of the most difficult elements in the electoral process in Kentucky is the partisan control of the procedure. From the first constitution to the present day the county sheriff has been a dominant figure in the local political process for he has administered and supervised elections. He has been, and is, a partisan, frequently a local factional leader. With each of the major parties entitled to one representative on a bipartisan election board of three, the party complexion of the board is determined by the party and factional affiliation of the sheriff. With approximately 100 of Kentucky's counties falling into a dominantly Republican or dominantly Democratic category this tends further to develop one party counties and destroy parties as policy formulators.

Counting votes sometimes is more important than the procedure of casting them. The fact that no local official is non-partisan is at the heart of the matter. County clerks as well as county sheriffs are partisan individuals. Sheriffs and clerks are the core of the process of casting and counting votes. Clerks, like the sheriffs, are partisan officials nominated in primaries and chosen in elections. At least every four years, they are candidates with a continuing personal vested interest in the outcome. In view of these facts, it is a tribute to customary ethics that elections are as honestly and accurately administered as they are. Only the moral standards of society and the presence of a generally vigilant

press and alert citizens can make it so. Candidates still feel it essential in statewide contests for them to have representatives locally or votes may not be accurately counted. On non-partisan issues, even upon amending the fundamental law of the Commonwealth, votes are sometimes estimated rather than counted.

The contrast between the partisan administration of the electoral process in Kentucky and a non-partisan administration of elections may be had by a comparison with English elections. In Great Britain, elections are administered by local officials who are permanent members of the civil service. Decisions upon eligibility and the determination of residence are left to officials who have neither personal nor partisan interest in the outcome. This fact reduces personal bitterness and friction preventing the kind of episodes which frequently discredit the political process in Kentucky and leave lasting memories of personal hatred to mar the most important procedure in a political democracy.

Probably the most important step which could be taken in the improvement of the political procedure of Kentucky would be the removal of the electoral process from partisan control. This can best be done by establishing one local official, probably the county clerk, on a non-partisan, permanent civil service basis, and centralizing the whole election procedure in his hands. For one hundred years the election by popular vote of local administrative officials has confused the role of policy making. The introduction of the direct primary further blurs issues and makes "politics" a matter of personalities. To reverse this process will probably take decades. A good beginning might be made by lifting the clerk's office from popular election and placing it on the basis of competence similar to that of the county agent or county school superintendent. The creation of one official in county government whose efficiency and neutrality are assured would make possible the elimination of partisan administration of elections.

The universal adoption of voting machines could vastly expedite the election count and reduce, but not entirely eliminate illegal practices in making returns. These procedural improvements, however, do not strike at the roots of some of the basic problems of the democratic process in Kentucky. The fact that voting machines are offered as a means for improving "honesty" in elections is an ironic commentary upon the state of political

morality in a community. Is it necessary to employ technology as a way to prevent defects which arise out of weaknesses in character? Does this suggest an advanced or a primitive stage of civilization?

2. Impartial Districting, Apportionment, and Judicial Treatment of Election Contests

Apportionment, districting, and determining the outcome of contested elections are primarily judicial or fact finding functions. These tasks are improper for legislative bodies to decide on the basis of either policy or majority power. Some kind of independent judicial body chosen on a non-partisan basis primarily for competence should be set up. This will probably require a constitutional change but it is essential none the less. The democratic process as proclaimed by the Bill of Rights is too precious a heritage to be left to partisan or factional caprice.

3. Parties as Policy Framers

The single most important factor in restoring parties to their proper function as policy formulators is the elimination of "spoils" or patronage. It cannot be emphasized too strongly that the *proper function of parties is to clarify matters of policy and to offer alternative programs of political action*. In this role, political parties are essential to the existence of political democracy itself. Parties in this capacity distinguish democracy from totalitarianism either of fascism or of communism. In an industrial order, proficiency is essential. If Kentucky is to take its place in an industrial society, it must replace patronage based upon popularity with competence in government work. Once the personnel function is removed from parties they may be able to resume their appropriate role as political educators of the masses. Political leaders may again offer competing principles (values) instead of public positions as a means of aiding a free democratic society make its choices. The essence of political democracy depends less upon *who* holds the jobs than upon *what* government undertakes to do.

4. The Role of the Parties in Civic Education

One of the principal reasons for patronage as a device for perfecting party organization is because it is so difficult to get

voters to exercise their hard won privilege of voting. The state might approach this problem in several ways.

(1) The vote might be made compulsory. This would remove from parties the task of persuading people to go to the polls.

(2) The state might systematically appropriate funds to political parties for carrying on their educational or propaganda work. This would free parties from the practice of relying upon the assessment of public employees, or upon *interested* gifts, which may on occasion appear to put sovereignty on the auction block. The survival of a free society is too necessary to be placed upon such dangerous supports.

(3) The state may need to make such appropriations dependent upon the willingness of party leaders to participate in debates and subject themselves to cross examination upon policy matters before the various media of communication so that voters may make their choices with the maximum of fact and rationality and the minimum of demagoguery and emotion.

The fundamental problem is to promote the exercise of reason and reduce the influence of emotion in making policy decisions. Observers of jury procedure are not thoroughly convinced of its efficacy, but surely they have more confidence in it than in a process by which the jurors hear only one side, prosecution or defense. Yet a large proportion of the electorate neither listens nor reads any evidence except that which is *ex parte*, and largely addressed to the non-rational parts of man's nature. The development of the modern media of communication, notably radio and television, have altered the nature of the political process in Kentucky. Access to these media is very expensive, hence many able individuals and worthwhile issues are cut off from public presentation by the absence of financial support. Additionally, the press tends to become non-partisan in affiliation but strongly influenced by *interest* in the presentation of personalities and issues. To overcome these handicaps by person-to-person campaigning in an electorate as large as that of Kentucky puts a strain upon personal health and encourages a species of demagoguery dangerous to confidence in the democratic process. Any means which can develop a procedure more like that of the jury trial where all sides can receive a hearing tends to encourage the rational process in

citizens and the growth of mental action in making choices and thereby raising the intellectual level of the population.

In the future, the Commonwealth will need to give serious consideration to the use of media of communication as propaganda agencies, for the values of a society may be determined by the kind of ideas, doctrines, and images which are presented to its citizens. It is not propaganda but the absence of competing propaganda that leads to lethargy and civic indifference. It is hazardous *public policy* to allow *public policy* to be determined only by those interests which can afford to purchase access to the media of communication. The state of Kentucky as well as the United States as a whole and other democratic countries need to develop means of adult education commensurate with the importance of the issues confronting voters for decision. Voter comprehension may be enhanced by joint debates, discussions, round tables, and forums. Public discussions which include the process of cross examination by skilled attorneys and students of public affairs can help produce an informed electorate which will make its choices on vital public policy rather than on the basis of bitter partisan emotion, tradition, personal loyalty, or civic apathy. The consequences of public action are too important in a hydrogen age to be left to the customary non-rational conclusions or visceral reactions to *ex parte* evidence.

These are possible tools for making the dreams of our agrarian forefathers become realities in the industrial future.